

Halsbury's Laws of England/TRADE AND INDUSTRY (VOLUME 97 (2010) 5TH EDITION)/1.
ADMINISTRATION/(1) CENTRAL GOVERNMENT/801. Government responsibility in general.

TRADE AND INDUSTRY (VOLUME 97 (2010) 5TH EDITION)

1. ADMINISTRATION

(1) CENTRAL GOVERNMENT

801. Government responsibility in general.

Government responsibility in relation to matters of trade and industry is vested in the Department for Business, Innovation and Skills¹. Certain functions, in so far as they are exercisable in relation to Wales, have been transferred to, or are now exercisable concurrently with, the National Assembly for Wales and the Welsh Ministers².

1 As to this department see PARA 802.

2 See PARA 802 text and note 21.

Halsbury's Laws of England/TRADE AND INDUSTRY (VOLUME 97 (2010) 5TH EDITION)/1. ADMINISTRATION/(1) CENTRAL GOVERNMENT/802. Transfers of functions between government departments, the Secretary of State and the Welsh Ministers.

802. Transfers of functions between government departments, the Secretary of State and the Welsh Ministers.

Matters relating to trade were originally within the general jurisdiction of the Board of Trade¹. Subsequently specialised ministries were established such as those relating to technology, power, science² and aviation. In 1970 certain powers previously exercised by such ministries were transferred to the Secretary of State³, which in practice meant the Secretary of State for Trade and Industry⁴, who was also empowered to exercise concurrently the powers of the Board of Trade⁵. This device of assigning powers simply to 'the Secretary of State' was used again in 1974 when the Department of Trade and Industry was divided and its functions transferred en bloc to the Secretary of State⁶ and distributed by administrative arrangements⁷ among the four successor Departments of Trade, Industry, Energy⁸ and Prices and Consumer Protection⁹.

In 1983 the Departments of Trade and of Industry were once again amalgamated to form a single department, known as the Department of Trade and Industry, and the functions of the Secretary of State for Trade and the Secretary of State for Industry were transferred en bloc to the Secretary of State for Trade and Industry¹⁰, who could also use the title 'President of the Board of Trade'¹¹. Following the May 2005 general election the name of the Department of Trade and Industry was changed to the Department for Productivity, Energy and Industry but the old name was almost immediately reinstated. The Department of Trade and Industry was replaced by the Department for Business, Enterprise and Regulatory Reform and the Department for Innovation, Universities and Skills on 28 June 2007, which in turn were merged on 5 June 2009 to form the Department for Business, Innovation and Skills¹². The Secretary of State for Business, Innovation and Skills is now the relevant Secretary of State and President of the Board of Trade.

Certain functions of the Board of Trade relating to employment were transferred to the Minister of Labour in 1916¹³ and from him to the Secretary of State for Employment and Productivity on the dissolution of the Ministry of Labour in 1968¹⁴. The title of that Secretary of State was changed in 1970 to Secretary of State for Employment and in 2002 to Secretary of State for Work and Pensions¹⁵, but a number of employment functions are now exercisable by the Secretary of State for Business, Innovation and Skills¹⁶. Functions relating to tourism were transferred from the Secretary of State for Trade and Industry to the Secretary of State for Employment in 1985¹⁷ but subsequently transferred to the Secretary of State for National Heritage¹⁸; and functions relating to small businesses also transferred to him in 1985 were subsequently transferred to the Secretary of State for Trade and Industry¹⁹. The functions of the Secretary of State for Employment relating to general indices of retail prices and the family expenditure survey were transferred to the Chancellor of the Exchequer in 1989²⁰.

Functions relating to Wales are now mainly the responsibility of the Welsh Ministers²¹.

1 As to the Board of Trade see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 505. The Board of Trade is still mentioned in many statutes and still theoretically exists. However, in time its functions came to be exercised mainly by its President. The office of President of the Board of Trade was held by the Secretary of State for Trade and Industry, who exercised the President's functions concurrently and could use the title (see text and note 11); Secretary of State for Trade and Industry Order 1970, SI 1970/1537, art 2(1)(b) (lapsed). The Secretary of State for Business, Innovation and Skills has now taken over the functions of the Secretary of State for Trade and Industry: see text and note 12. Certain functions of the Board of Trade and Secretary of State are now exercisable concurrently with the Chancellor of the Exchequer: Transfer of Functions (Economic Statistics) Order 1989, SI 1989/992, art 2. Others are exercisable concurrently with or transferred to the Treasury: Transfer of Functions (Financial Services) Order 1992, SI 1992/1315.

2 Certain functions of this minister were transferred to the Secretary of State for Education and Science by virtue of the Secretary of State for Education and Science Order 1964, SI 1964/490, and subsequently to the former Minister of Technology by virtue of the Minister of Technology Order 1964, SI 1964/2048 (lapsed). Other functions were transferred to the Secretary of State for Education and Science in 1964 and retained by him until 1992, when his title was changed to Secretary of State for Education: see the Transfer of Functions (Science) Order 1992, SI 1992/1296. The Secretary of State for Business, Innovation and Skills now exercises functions under the Science and Technology Act 1965 (see **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 967 et seq): Transfer of Functions (Science) Order 1995, SI 1995/2985; and see the Transfer of Functions (Scientific Research) Order 1999, SI 1999/2785.

3 See the Secretary of State for Trade and Industry Order 1970, SI 1970/1537 (amended by SI 1971/716; and by the Supply Powers Act 1975 s 8(1), Sch 2 Pt II) (lapsed).

4 See the Secretary of State for Trade and Industry Order 1970, SI 1970/1537, art 2(1)(a) (lapsed). The Secretarieship of State is theoretically one office and a reference simply to the Secretary of State means one of Her Majesty's Principal Secretaries of State, without being specific: see the Interpretation Act 1978 s 5, Sch 1; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 355 et seq.

5 See the Secretary of State for Trade and Industry Order 1970, SI 1970/1537, art 2(1)(a) (lapsed).

6 See the Secretary of State (New Departments) Order 1974, SI 1974/692 (amended by SI 1976/1775) (lapsed).

7 See 871 HC Official Report (5th series) written answers col 178.

8 In 1992 the former functions of the Department of Energy were transferred to the Secretary of State for Trade and Industry, except for energy efficiency functions which were transferred to the Secretary of State for the Environment: see the Transfer of Functions (Energy) Order 1992, SI 1992/1314.

9 In 1979 the remaining functions of the Secretary of State for Prices and Consumer Protection were transferred to the Secretary of State for Trade: see the Secretary of State for Trade Order 1979, SI 1979/578.

10 See the Transfer of Functions (Trade and Industry) Order 1983, SI 1983/1127, art 2(1). The civil aviation and shipping functions of the Secretary of State for Trade were transferred to the Secretary of State for Transport: art 2(3).

11 See eg Department of Trade and Industry Press Notice P/92/241, dated 15 April 1992.

12 See the Department for Business, Enterprise and Regulatory Reform Annual Report and Accounts 2008-2009 para 1.1.

13 See the New Ministries and Secretaries Act 1916 s 1 (repealed).

14 See the Secretary of State for Employment and Productivity Order 1968, SI 1968/729 (lapsed).

15 See the Secretaries of State for Education and Skills and for Work and Pensions Order 2002, SI 2002/1397.

16 See the Secretary of State for Trade and Industry Order 1970, SI 1970/1537 (lapsed); and the Transfer of Functions (Education and Employment) Order 1995, SI 1995/2986. The employment functions of this Secretary of State are now exercisable by the Department for Business, Innovation and Skills.

17 See the Transfer of Functions (Tourism and Small Businesses) Order 1985, SI 1985/1778.

18 See the Transfer of Functions (National Heritage) Order 1992, SI 1992/1311. The Secretary of State for National Heritage is now the Secretary of State for Culture, Media and Sport: see the Secretary of State for Culture, Media and Sport Order 1997, SI 1997/1744.

19 See the Transfer of Functions (Tourism and Small Businesses) Order 1985, SI 1995/1778; and the Transfer of Functions (Small Businesses) Order 1992, SI 1992/1297.

20 See the Transfer of Functions (Economic Statistics) Order 1989, SI 1989/992.

21 Pursuant to the establishment of the Welsh Assembly Government under the Government of Wales Act 2006 Pt 2 (ss 45-92) (see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**), statutory functions relating to trade and industry, including functions under subordinate legislation, so far as exercisable in relation to Wales, are now almost exclusively the responsibility of Welsh Ministers (ie the First Minister and the Welsh Ministers established

under ss 46, 48: see s 45(2); and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**). These functions were previously transferred to the National Assembly for Wales by Order in Council under the Government of Wales Act 1998 s 22 (see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, arts 2, 3, Sch 1). Relevant functions were transferred from the Assembly to the Welsh Ministers by the Government of Wales Act 2006 s 162, Sch 11 para 30. Further transfers of ministerial functions to the Welsh Ministers may be effected by Order in Council pursuant to s 58, Sch 3 paras 1-8. As to the exercise of transferred functions and the bringing of subordinate legislation made by the Welsh Ministers before the National Assembly for Wales see Sch 11 paras 33-35 (in the case of functions transferred to the Assembly by Order in Council under the Government of Wales Act 1998 s 22) or the Government of Wales Act 2006 Sch 3 para 9 (in the case of functions transferred to the Welsh Ministers by Order in Council under s 58); and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

Few functions relevant to this title have actually been so transferred; those which have, or are now exercisable concurrently, relate to:

- 1 (1) industrial designs: see the Industrial Organisation and Development Act 1947 s 11; and PARA 935;
- 2 (2) the development of tourism: see the Development of Tourism Act 1969 ss 1(2), (6), 2(8), (8A), 4(1), (4), 6(1)-(4), 17(1), (4); the Tourism (Overseas Promotion) (Wales) Act 1992; the Wales Tourist Board (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3225; and generally PARA 928 et seq;
- 3 (3) the Welsh Development Agency: see the Welsh Development Agency Act 1975, and the Welsh Development Agency (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3226; and generally PARA 954 et seq;
- 4 (4) industrial development generally: see the Industrial Development Act 1982; and generally PARA 936.

As to the National Assembly for Wales and the Welsh Ministers generally see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

Halsbury's Laws of England/TRADE AND INDUSTRY (VOLUME 97 (2010) 5TH EDITION)/1.
ADMINISTRATION/(2) INQUIRIES AND ARBITRATIONS/803. Inquiries by the Secretary of State.

(2) INQUIRIES AND ARBITRATIONS

803. Inquiries by the Secretary of State.

Where under any special Act¹ the Secretary of State² is required or authorised to sanction, approve, confirm or determine any appointment, matter or thing, or make any order or do any other act for the purpose of the special Act, he may make such inquiries as he thinks necessary to enable him to comply with that requirement or exercise that authority³. An inquiry by the Secretary of State under any Act may be held by any person duly authorised by him, and if so held is deemed to be duly held⁴.

1 'Special Act' means a local or local and personal Act, or an Act of a local and personal nature, and includes a provisional order of the Secretary of State confirmed by Act of Parliament: Board of Trade Arbitrations, etc Act 1874 s 4 (amended by the Statute Law (Repeals) Act 1976 s 1(1), Sch 1 Pt XXI).

2 As to the office of the Secretary of State see PARA 802. These powers were originally vested in the Board of Trade, but are now exercisable by the Secretary of State: see PARA 802; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 355-359. In relation to railways, light railways, tramways, canals, waterways and inland navigation, these powers are exercisable by the Secretary of State for Transport or the Secretary of State for Environment, Food and Rural Affairs.

3 Board of Trade Arbitrations, etc Act 1874 s 2.

4 See the Board of Trade Arbitrations, etc Act 1874 s 2.

Halsbury's Laws of England/TRADE AND INDUSTRY (VOLUME 97 (2010) 5TH EDITION)/1. ADMINISTRATION/(2) INQUIRIES AND ARBITRATIONS/804. Expenses of inquiries and arbitrations.

804. Expenses of inquiries and arbitrations.

When application is made to the Secretary of State¹ in pursuance of a special Act² to be arbitrator or to appoint any arbitrator or other person, or to hold an inquiry, or do any other thing for the purpose of the special Act, all expenses of the Secretary of State must be defrayed by the parties to the application to such an amount as he may certify by order to be due; and, subject to any provision in the special Act, the expenses must be defrayed by such of the parties as he may by order direct, or, if so directed, be paid as the costs of the arbitration³. The Secretary of State may require payment on account or security for payment on demand⁴. His certificate is conclusive as to amount, which may be recovered as a debt, and, if payable to him, as a debt due to the Crown⁵.

1 As to the Secretary of State see PARA 802.

2 As to the meaning of 'special Act' see PARA 803 note 1.

3 Board of Trade Arbitrations, etc Act 1874 s 3.

4 Board of Trade Arbitrations, etc Act 1874 s 3.

5 Board of Trade Arbitrations, etc Act 1874 s 3. As to the recovery of debts due to the Crown see **CROWN PROCEEDINGS AND CROWN PRACTICE** vol 12(1) (Reissue) PARAS 107-109.

Halsbury's Laws of England/TRADE AND INDUSTRY (VOLUME 97 (2010) 5TH EDITION)/2.
LEGISLATIVE CONTROLS/(1) GENERAL CONTROLS/(i) Supply/805. Powers of the Secretary of State.

2. LEGISLATIVE CONTROLS

(1) GENERAL CONTROLS

(i) Supply

805. Powers of the Secretary of State.

The Secretary of State¹ has power to acquire, produce or process articles required for the public service² or articles to be exchanged for such articles; to sell, exchange or otherwise dispose of any such articles or any government surplus materials³; to store and transport any such articles and materials; and to do all such things in the exercise of these powers (including the erection of buildings and the execution of works) as appear to him necessary or expedient for the exercise of these powers⁴. He may also make payments by way of grant or loan, in accordance with arrangements approved by the Treasury, to any person producing, dealing in or having control of any article required for the public service and to any person carrying on the business of storing goods, for the purpose of inducing the augmentation of stocks of that article or of any other article which can conveniently be used for or in connection with its production, or the improvement of facilities available for the storage of any such stocks or any articles required for the public service⁵.

The Secretary of State may also by notice in writing require any person producing, dealing in or having control of any article required for the public service to make periodical and other returns, at such times, and containing such particulars as may be specified in the notice, as to: (1) the stocks of that article for the time being held by him and the quantities of any such article which by virtue of any contract are to be delivered by or to him and the date of such delivery; and (2) the facilities available for producing that article or storing stocks of it⁶. He may by the like notice require any person carrying out works required for the public service⁷, or carrying on a business which in the opinion of the Secretary of State is suitable for or can be adapted to carrying out such works, or who has under his control accommodation suitable for the storage of any articles required for that service, to make periodical and other returns, at times specified in the notice and containing particulars so specified, as to: (a) the facilities for carrying out such works⁸; or (b) the nature and extent of the accommodation, the period for which any part of it is already required and its purpose, and the facilities available for making use of it⁹.

Her Majesty may by Order in Council apply in relation to the Secretary of State¹⁰ any of the provisions of certain specified enactments¹¹ for the purpose of conferring on him any powers, rights and privileges in relation to the acquisition and holding of land for the purpose of discharging any of his functions, and in relation to the management, use and disposal in any manner of land acquired for that purpose, which under those enactments are vested in the Secretary of State for Defence for any purpose¹². No recommendation may, however, be made to make such an order unless a draft of the order has been laid before Parliament and has been approved by a resolution of each House of Parliament¹³; and any such order may be varied or revoked by a subsequent order¹⁴.

¹ As to the Secretary of State see PARA 802. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 802 note 21.

2 As to the meaning of 'articles required for the public service' see PARA 806.

3 'Government surplus materials' means surplus articles of any government department and surplus articles of the government of any country outside the United Kingdom to be disposed of by Her Majesty's government in the United Kingdom in pursuance of an agreement between those governments: Supply Powers Act 1975 s 7. 'Government department' includes a Northern Ireland department: s 7. As to the meaning of 'United Kingdom' see PARA 806 note 7.

4 Supply Powers Act 1975 s 1(1). Without prejudice to his powers of inspection under s 1(1), the Secretary of State may, at the request of the parties concerned, carry out or supervise the carrying out of any inspection for the purposes of or in connection with the production of any articles where the inspection can conveniently be carried out or supervised by him in connection with the exercise of his functions: s 1(2).

5 Supply Powers Act 1975 s 3. As to untrue statements etc for the purpose of obtaining such a payment see PARA 807. As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

6 Supply Powers Act 1975 s 4(1). Where a government department or any body or person has, by virtue of any Act, power to obtain for any purpose information as to matters with respect to which the Secretary of State is empowered by s 4(1)-(3) to require returns to be made: (1) that department or body must, if so required by him, exercise that power for the purpose of assisting him in obtaining any such information (s 4(4)(a)); and (2) any such information obtained by that department or body may, whether upon a requisition of the Secretary of State or otherwise, notwithstanding anything in any enactment, be furnished to him (s 4(4)(b)). As to unauthorised disclosure of information see PARA 807.

7 As to the meaning of 'works required for the public service' see PARA 806.

8 Supply Powers Act 1975 s 4(2). See also note 6.

9 Supply Powers Act 1975 s 4(3). See also note 6.

10 References in the Supply Powers Act 1975 s 2 to the Secretary of State do not include the Secretary of State for Defence: s 2(6). As to the Secretary of State for Defence see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 438 et seq.

11 Ie the enactments specified in the Supply Powers Act 1975 s 2(1), Sch 1 Pt I. The specified enactments are the Defence Acts 1842-1873; the Ordnance Board Transfer Act 1855; the Lands Clauses Consolidation Acts Amendment Act 1860 s 7; the Militia (Lands and Buildings) Act 1873 s 7; the Municipal Corporations Act 1882 s 254; and the Military Lands Act 1892 Pt II (ss 14-18); Supply Powers Act 1975 Sch 1 Pt I. Any of the provisions of the Harbours, Docks and Piers Clauses Act 1847 s 28, with any necessary modifications or adaptations, may also be applied by Order in Council in relation to the Secretary of State acting in the discharge of any of his functions under the Supply Powers Act 1975 or to property for the time being vested in or under his control for the purpose of discharging any of those functions: s 2(2), Sch 1 Pt II (amended by the Transport and Works Act 1992 s 68(1), Sch 4 Pt I).

12 Supply Powers Act 1975 s 2(1).

13 Supply Powers Act 1975 s 2(4). If, at any time when Parliament is dissolved or prorogued or when both Houses of Parliament are adjourned for more than 14 days, it is shown to the satisfaction of the Secretary of State that the making of an Order in Council under s 2 is urgently necessary, a draft of the order need not be laid before Parliament, but the order ceases to have effect, except as respects things previously done or omitted to be done, at the expiration of the period of 28 days beginning with the date on which the House of Commons first sits after the making of the order unless within that period resolutions approving the order are passed by both Houses of Parliament: s 2(5). As to the laying of instruments before Parliament see **PARLIAMENT** vol 34 (Reissue) PARA 941 et seq.

14 Supply Powers Act 1975 s 2(3).

Halsbury's Laws of England/TRADE AND INDUSTRY (VOLUME 97 (2010) 5TH EDITION)/2. LEGISLATIVE CONTROLS/(1) GENERAL CONTROLS/(i) Supply/806. Articles and works required for the public service.

806. Articles and works required for the public service.

'Articles required for the public service' means:

- 1 (1) articles¹ required for the discharge of its functions by any government department², the United Kingdom Atomic Energy Authority³, the Civil Aviation Authority⁴ or any research council⁵;
- 2 (2) articles required for the defence of any part of the Commonwealth⁶, including any territory under Her Majesty's protection or in which she has jurisdiction, or for the maintenance or restoration of peace and security in any part of the world or for any measures arising out of a breach or apprehended breach of peace in any part of the world;
- 3 (3) articles required by any international organisation of which the United Kingdom⁷ is a member or (where the relevant international agreement so provides) by any other member of such an organisation;
- 4 (4) articles which in the opinion of the Secretary of State⁸ would be essential for the needs of the community in the event of war;
- 5 (5) articles for supply to a person carrying on an undertaking which includes the production of articles of that or any other description where that person requests the Secretary of State to supply those articles, and the Secretary of State is satisfied that the supply will serve the interests of the community; and
- 6 (6) anything which, in the opinion of the Secretary of State, is or is likely to be necessary for or in connection with the production of any such articles as are mentioned in heads (1) to (5) above⁹.

'Works required for the public service' is to be construed accordingly¹⁰.

1 'Articles' includes substances: Supply Powers Act 1975 s 7.

2 As to the meaning of 'government department' see PARA 805 note 3.

3 As to the United Kingdom Atomic Energy Authority see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1363 et seq.

4 As to the Civil Aviation Authority see **AIR LAW** vol 2 (2008) PARA 50 et seq.

5 Ie any research council within the meaning of the Science and Technology Act 1965: see s 1; and **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 967 et seq.

6 As to the Commonwealth see generally **COMMONWEALTH**.

7 'United Kingdom' means Great Britain and Northern Ireland: Interpretation Act 1978 s 5, Sch 1. 'Great Britain' means England, Scotland and Wales: Union with Scotland Act 1706 preamble art 1; Interpretation Act 1978 s 22(1), Sch 2 para 5(a). Neither the Channel Islands nor the Isle of Man is within the United Kingdom. See further **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 3.

8 As to the Secretary of State see PARA 802. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 802 note 21.

9 Supply Powers Act 1975 s 7.

10 Supply Powers Act 1975 s 7.

Halsbury's Laws of England/TRADE AND INDUSTRY (VOLUME 97 (2010) 5TH EDITION)/2. LEGISLATIVE CONTROLS/(1) GENERAL CONTROLS/(i) Supply/807. Disclosure of information, offences and penalties.

807. Disclosure of information, offences and penalties.

No information with respect to an individual business which has been obtained under or by virtue of the Supply Powers Act 1975 may be disclosed without the consent of the person carrying on that business¹, but this does not apply to the disclosure of any information to a government department², or any person authorised by a government department, requiring that information for the purpose of the discharge of that department's functions, or any disclosure for the purposes of any prosecution for an offence under that Act³.

If any person knowingly or recklessly makes any untrue statement or untrue representation for the purpose of obtaining a payment, either for himself or for another person, for the creation of a reserve⁴, or discloses any information in contravention of the above provisions, he is guilty of an offence⁵.

If any person fails to make any return which he is required⁶ to make, or knowingly or recklessly makes any untrue statement in any such return, he is guilty of an offence⁷.

Where any of the above offences committed by a body corporate is proved to have been committed with the consent or connivance of any director, manager, secretary or other officer of that body, he, as well as the body corporate, is guilty of the offence and is liable to be proceeded against and punished accordingly⁸.

1 Supply Powers Act 1975 s 5(1).

2 As to the meaning of 'government department' see PARA 805 note 3.

3 Supply Powers Act 1975 s 5(2).

4 Ie a payment under the Supply Powers Act 1975 s 3: see PARA 805.

5 Supply Powers Act 1975 s 6(1). A person guilty of such an offence is liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding the prescribed sum, or to both, or on conviction on indictment to imprisonment for term not exceeding two years or a fine, or to both: s 6(1)(a), (b) (amended by virtue of the Criminal Law Act 1977 s 32(1); and the Magistrates' Courts Act 1980 s 32(2)). As to the prescribed sum see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 141.

6 Ie under the Supply Powers Act 1975 s 4: see PARA 805.

7 Supply Powers Act 1975 s 6(2). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 6(2) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). Where the failure continues after conviction, he is guilty of a further offence and liable on summary conviction to a fine not exceeding £50 for each day on which the failure continues: Supply Powers Act 1975 s 6(2). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

8 Supply Powers Act 1975 s 6(3).

Halsbury's Laws of England/TRADE AND INDUSTRY (VOLUME 97 (2010) 5TH EDITION)/2.
 LEGISLATIVE CONTROLS/(1) GENERAL CONTROLS/(ii) Imports and Exports/A. IN GENERAL/808.
 General legislative powers of control.

(ii) Imports and Exports

A. IN GENERAL

808. General legislative powers of control.

The import and export of goods is subject to general control under legislation now largely consolidated in the Customs and Excise Acts 1979¹. The import of certain goods is specifically prohibited under the Customs Consolidation Act 1876 and other enactments². However, in addition, under the Import, Export and Customs Powers (Defence) Act 1939 the Secretary of State³ may by order⁴ regulate or prohibit the import into the United Kingdom⁵, or any specified part of it, of any goods⁶. This power was originally conferred on the basis that it would expire at the end of the wartime emergency which necessitated it⁷ but it was never withdrawn and is now exercisable on a permanent basis⁸. The Export Control Act 2002 enables controls to be imposed on the export of goods, the transfer of technology, the provision of technical assistance overseas and activities connected with trade in controlled goods⁹.

1 The Acts which may be cited together as the Customs and Excise Acts 1979 are the Customs and Excise Duties (General Reliefs) Act 1979, the Alcoholic Liquor Duties Act 1979, the Hydrocarbon Oil Duties Act 1979, the Tobacco Products Duty Act 1979, and the Customs and Excise Management Act 1979: s 178(2) (amended by the Finance (No 2) Act 1992 s 82, Sch 18 Pt II). As to customs duties generally and as to free movement of goods within the European Union see **CUSTOMS AND EXCISE** vol 12(2) (2007 Reissue) PARA 1 et seq.

2 See the Customs Consolidation Act 1876 s 42 (amended by the Statute Law Revision Act 1883; the Revenue Act 1883 s 19, Schedule; the Finance Act 1896 s 5; the Copyright Act 1911 s 36, Sch 2; the Finance Act 1917 s 6; the Finance Act 1929 ss 5, 6, Schedule; the Finance Act 1946 ss 2(1), 67(10), Sch 12 Pt I; the Isle of Man (Customs) Act 1946 s 1(1); the Customs and Excise Act 1952 s 320, Sch 12 Pt I; the Hallmarking Act 1973 s 23, Sch 7 Pt I; the Diseases of Animals Act 1975 s 4(3), Sch 2; the Forgery and Counterfeiting Act 1981, Schedule Pt II; the Statute Law (Repeals) Act 1993; and the Statute Law (Repeals) Act 2008). As to restrictions on the import and export of animals see **ANIMALS** vol 2 (2008) PARAS 966 et seq, 1081 et seq; as to restrictions on the import and export of certain plants see **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARAS 1162-1174; and as to restrictions on the import of controlled drugs see **MEDICINAL PRODUCTS AND DRUGS** vol 30(2) (Reissue) PARA 248. As to drug trafficking offences see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 770 et seq.

3 Powers under the Import, Export and Customs Powers (Defence) Act 1939 were originally vested in the Board of Trade, but are now exercisable by the Secretary of State for Business, Innovation and Skills (who is President of the Board of Trade at the date at which this volume states the law): see PARA 802.

4 See the Import of Goods (Control) Order 1954, SI 1954/23; the Export of Objects of Cultural Interest (Control) Order 2003, SI 2003/2759; the Export Control Order 2008, SI 2008/3231; and PARA 815 et seq. Orders may also be made in respect of individual countries or territories: see eg the Export of Goods (Control) (Iraq and Kuwait Sanctions) Order 1990, SI 1990/1640 (revoked); the Export of Goods (Federal Republic of Yugoslavia) (Control) Order 1998, SI 1998/1530 (revoked).

5 For the purposes of the Import, Export and Customs Powers (Defence) Act 1939, the Isle of Man forms part of the United Kingdom: s 8(1)(a). As to the meaning of 'United Kingdom' generally see PARA 806 note 7.

6 See the Import, Export and Customs Powers (Defence) Act 1939 s 1(1) (amended by the Export Control Act 2002 s 15(1), (2)(a)); and **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARAS 996, 1027. 'Goods' includes stores and baggage; 'stores' means goods for use in a ship or aircraft and includes fuel and spare parts and other articles of equipment, whether or not for immediate fitting; and 'ship' includes any boat or other vessel whatsoever and any hovercraft: Customs and Excise Management Act 1979 s 1(1), (2), (4) (s 1(4) substituted by the Finance Act 1999 s 10(1)); applied by the Import, Export and Customs Powers (Defence) Act 1939 s 9(2)

(amended by the Customs and Excise Management Act 1979 s 177(1), Sch 4 para 12, Table Pt I). An order under the Import, Export and Customs Powers (Defence) Act 1939 s 1 may suspend wholly or in part the operation of any enactment, proclamation, Order in Council or order prohibiting or regulating the import of any goods and may contain such provisions (including penal provisions) as appear to the Secretary of State necessary for securing the operation and enforcement of the order: see s 1(3) (amended by the Export Control Act 2002 s 15(2)(b)). The order may be varied or revoked by a subsequent order: Import, Export and Customs Powers (Defence) Act 1939 s 1(2). Without prejudice to the provisions of enactments for the time being in force relating to customs or excise with respect to ships and aircraft, the taking into the United Kingdom of ships or aircraft may be prohibited or regulated by an order under s 1 as an import of goods, notwithstanding that the ships or aircraft are conveying goods or passengers, and whether or not they are moving under their own power: s 1(4) (amended by the Customs and Excise Management Act 1979 Sch 4 para 12, Table Pt I; and the Export Control Act 2002 s 15(2)(c)). Notwithstanding anything in the Customs and Excise Management Act 1979 s 145 (see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1197), a prosecution for an offence under such an order may be instituted by or under the authority of the Secretary of State: Import, Export and Customs Powers (Defence) Act 1939 s 1(5) (amended by the Customs and Excise Management Act 1979 Sch 4 para 12, Table Pt I).

Nothing in any order made under the Import, Export and Customs Powers (Defence) Act 1939 s 1 applies to the importation into the United Kingdom of any cocoa beans and such products as are for the time being defined as cocoa products for the purposes of the International Cocoa Agreement (New York, 15 November 1972): International Cocoa Agreement Act 1973 s 1(1), (6), (7). Such goods may only be imported under a licence granted by the Secretary of State under that Act which may be revoked or varied at any time, and may be granted subject to a condition requiring the production of evidence that any contribution chargeable under the International Cocoa Agreement has been paid or secured: see the International Cocoa Agreement Act 1973 s 1(2)-(4). Any person who, for the purpose of obtaining such a licence, makes a statement or furnishes any document or information which to his knowledge is false in a material particular or recklessly makes a statement which is false in a material particular is liable on summary conviction to a fine not exceeding level 5 on the standard scale: s 1(5) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

7 See the Import, Export and Customs Powers (Defence) Act 1939 s 9(3) (repealed) whereby the Act was to continue in force until such date as Her Majesty might by Order in Council declare to be the date on which the emergency that was the occasion of the passing of the Act came to an end, and was then to expire. No such order had been made at the date at which that provision was repealed: see note 8.

8 See the Import and Export Control Act 1990 s 1 (repealing the Import, Export and Customs Powers (Defence) Act 1939 s 9(3) (cited in note 7) with effect from 6 December 1990).

9 See PARAS 811-814.

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LEGISLATIVE CONTROLS/(1) GENERAL CONTROLS/(ii) Imports and Exports/A. IN GENERAL/809.
Power to impose charges.

809. Power to impose charges.

In connection with any scheme of control contained in an order made by the Secretary of State¹, the Treasury may by order provide for imposing and recovering such charges as may be specified in the first mentioned order². Any charges so recovered must be paid either into the Exchequer or into such public fund or account as may be specified in the Treasury order³.

1 He an order made under the Import, Export and Customs Powers (Defence) Act 1939 s 1: see PARA 808. As to the Secretary of State see PARA 802. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 802 note 21. See also PARA 808 note 3.

2 Import, Export and Customs Powers (Defence) Act 1939 s 2(1). Any such order must be laid before the House of Commons: see s 2(3) (amended by the Statute Law (Repeals) Act 1986); the Statutory Instruments Act 1946 s 4; and **STATUTES** vol 44(1) (Reissue) PARA 1515. If an order imposes or increases a charge, it ceases to have effect on the expiration of 28 days (not counting any time when Parliament is dissolved or prorogued, or during which the House of Commons is adjourned for more than four days) from the date of the making of the order unless at some time before the expiration of that period it has been approved by a resolution of the House of Commons, without prejudice, however, to the validity of anything previously done under the order or to the making of a new order: see the Import, Export and Customs Powers (Defence) Act 1939 s 2(4); and cf the Statutory Instruments Act 1946 s 4(3); and **STATUTES** vol 44(1) (Reissue) PARA 1515. At the date at which this volume states the law, no such order had been made.

3 Import, Export and Customs Powers (Defence) Act 1939 s 2(2).

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LEGISLATIVE CONTROLS/(1) GENERAL CONTROLS/(ii) Imports and Exports/A. IN GENERAL/810.
Offences.

810. Offences.

If any goods¹ are imported in contravention either of an order made under the Import, Export and Customs Powers (Defence) Act 1939², or of the law relating to trading with the enemy³, those goods are to be deemed prohibited goods and forfeited⁴.

1 As to the meaning of 'goods' see PARA 808 note 6.

2 Ie an order made under the Import, Export and Customs Powers (Defence) Act 1939 s 1: see PARA 808.

3 See in particular the Trading with the Enemy Act 1939; and **WAR AND ARMED CONFLICT** vol 49(1) (2005 Reissue) PARA 576 et seq. 'Enemy' means: (1) any state, or sovereign of a state, at war with Her Majesty; (2) any individual resident in enemy territory; (3) any body of persons (whether corporate or unincorporate) carrying on business in any place, if and so long as the body is controlled by a person who, under this provision, is an enemy; (4) any body of persons constituted or incorporated in, or under the laws of, a state at war with Her Majesty; or (5) any other person who for the purposes of any Act relating to trading with the enemy is to be deemed to be an enemy; but does not include any person by reason only that he is an enemy subject: Import, Export and Customs Powers (Defence) Act 1939 s 8(1)(b). 'Enemy territory' means any area which is under the sovereignty of, or in the occupation of, a power with whom Her Majesty is at war, not being an area in the occupation of Her Majesty or of a power allied with Her Majesty: s 8(1)(d). 'Enemy subject' means: (a) an individual who, not being either a British subject or a British protected person, possesses the nationality of a state at war with Her Majesty; or (b) a body of persons constituted or incorporated in, or under the laws of, any such state: s 8(1)(c). As to the meanings of 'British subject' and 'British protected person' for these purposes see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARAS 66, 72.

A certificate of a Secretary of State that any area is or was under the sovereignty of, or in the occupation of, any power, or as to the time at which any area became or ceased to be under such sovereignty or in such occupation is for these purposes conclusive evidence of the facts stated in the certificate: s 8(2). As to the Secretary of State see PARA 802. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 802 note 21. See also PARA 808 note 3.

4 Import, Export and Customs Powers (Defence) Act 1939 s 3(1) (amended by the Export Control Act 2002 s 15(1), (3)(a)).

If any goods are imported, an officer of revenue and customs may require any person possessing or having control of the goods to furnish proof that the importation is not unlawful by virtue either of an order or of the law relating to trading with the enemy (see note 3) and if such proof is not furnished to the satisfaction of the Commissioners for Revenue and Customs, then, unless the contrary is proved, the goods are deemed to be prohibited goods and are to be forfeited: Import, Export and Customs Powers (Defence) Act 1939 s 3(3) (amended by the Customs and Excise Act 1952 s 320, Sch 12 Pt I; the Emergency Laws (Miscellaneous Provisions) Act 1953 s 1, Sch 1 para 5; and the Export Control Act 2002 s 15(3)(a); and by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (2), (7)). As to proceedings under the customs and excise enactments see the Customs and Excise Management Act 1979 ss 145, 146, 146A, 147-152, 154-156, 171; and **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1197 et seq. As to the Commissioners for Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 900 et seq.

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B. EXPORT, TRANSFER OF TECHNOLOGY, TECHNICAL ASSISTANCE AND TRADE CONTROL

811. Control powers.

The Secretary of State may by order¹ make provision for or in connection with the imposition of: (1) export controls in relation to goods of any description²; (2) transfer controls in relation to technology of any description³; (3) technical assistance controls in relation to technical assistance of any description⁴; (4) trade controls in relation to goods of any description⁵.

'Export controls', in relation to any goods⁶, means the prohibition or regulation of their exportation from the United Kingdom or their shipment as stores⁷.

'Transfer controls', in relation to any technology⁸, means the prohibition or regulation of its transfer⁹ (a) by a person or from a place¹⁰ within the United Kingdom to a person or place outside the United Kingdom¹¹; (b) by a person or from a place outside the United Kingdom to a person who, or a place which, is also outside the United Kingdom, but only where the transfer is by, or within the control of, a United Kingdom person¹²; (c) by a person or from a place within the United Kingdom to a person who, or a place which, is also within the United Kingdom, but only where there is reason to believe that the technology may be used outside the United Kingdom¹³; or (d) by a person or from a place outside the United Kingdom to a person or place within the United Kingdom, but only where the transfer is by, or within the control of, a United Kingdom person and there is reason to believe that the technology may be used outside the United Kingdom¹⁴.

'Technical assistance controls', in relation to any technical assistance, means the prohibition or regulation of participation in the provision outside the United Kingdom of that technical assistance¹⁵. 'Technical assistance' means services which are provided or used, or which are capable of being used, in connection with the development, production or use of any goods or technology¹⁶. Technical assistance may be described in the order wholly or partly by reference to the uses to which it, or the goods or technology in question, may be put¹⁷. A person participates in the provision of technical assistance outside the United Kingdom if he provides technical assistance outside the United Kingdom or agrees to do so, or if he makes arrangements under which another person provides technical assistance outside the United Kingdom or agrees to do so¹⁸. Technical assistance controls may be imposed on acts done outside the United Kingdom, but only if they are done by a person who is, or is acting under the control of, a United Kingdom person¹⁹.

'Trade controls', in relation to any goods, means the prohibition or regulation of their acquisition or disposal, their movement or activities which facilitate or are otherwise connected with their acquisition, disposal or movement²⁰. Goods may be described in the order wholly or partly by reference to the uses to which the goods, or any information recorded on or derived from them, may be put²¹. A person acquires goods if he buys, hires or borrows them or accepts them as a gift, and a person disposes of goods if he sells, lets on hire, lends or gives them²². The making of an agreement with another to acquire, dispose of or move goods, and the making of arrangements under which another person acquires, disposes of or moves goods or agrees with a third person to acquire, dispose of or move goods, are activities which facilitate the acquisition, disposal or movement of the goods²³.

The Secretary of State may by order make provision in connection with any controls that may be imposed by a directly applicable European Union (EU) provision on the exportation of goods²⁴, the transfer of technology²⁵, participation in the provision of technical assistance²⁶, the acquisition, disposal or movement of goods, or on activities which facilitate or are otherwise connected with the acquisition, disposal or movement of goods²⁷.

The Secretary of State has power to make similar provision under European Union law²⁸.

1 Such an order must be made by statutory instrument and is subject to annulment in pursuance of a resolution of either House of Parliament: Export Control Act 2002 s 13(1), (5). See **PARLIAMENT** vol 34 (Reissue) PARA 945. As to orders made under this power see the Export of Objects of Cultural Interest (Control) Order 2003, SI 2003/2759; the Export Control Order 2008, SI 2008/3231; and PARA 816 et seq. As to the Secretary of State see PARA 802.

2 Export Control Act 2002 s 1(1).

3 Export Control Act 2002 s 2(1).

4 Export Control Act 2002 s 3(1).

5 Export Control Act 2002 s 4(1). See the Export Control (Iraq and Ivory Coast) Order 2005, SI 2005/232; the Export Control (Democratic Republic of Congo) Order 2005, SI 2005/1677 (amended by SI 2008/131 and SI 2008/1964); the Export Control (Uzbekistan) Order 2005, SI 2005/3257 (amended by SI 2009/1174); the Export Control (North Korea) Order 2007, SI 2007/1334; the Export of Radioactive Sources (Control) Order 2006, SI 2006/1846 (amended by SI 2009/585); the Export Control (Liberia) Order 2006, SI 2006/2065; the Export Control (Iran) Order 2007, SI 2007/1526 (amended by SI 2007/2170 and SI 2008/3063); and the Export Control (Burma) Order 2008, SI 2008/1098. There is to be paid out of money provided by Parliament any expenses of a government department incurred in consequence of the Export Control Act 2002, and any increase attributable to the Act in the sums payable out of such money under any other Act: s 14. Nothing in the Act affects Her Majesty in her private capacity within the meaning of the Crown Proceedings Act 1947 (see **CROWN PROCEEDINGS AND CROWN PRACTICE** vol 12(1) (Reissue) PARA 103): Export Control Act 2002 s 16(7). Her Majesty may by Order in Council direct that any of the provisions of the Act, or of any order under the Act, are to extend, with such exceptions and modifications as appear to Her Majesty to be appropriate, to the Isle of Man or to any British overseas territory: s 16(5). See the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) (Overseas Territories) Order 2004, SI 2004/3101; the Trade in Goods (Control) (Overseas Territories) Order 2004, SI 2004/3102; the Trade in Controlled Goods (Embargoed Destinations) (Overseas Territories) Order 2004, SI 2004/3103; and the Judicial Proceedings in Specified Overseas Territories (Restrictive Measures) Order 2009, SI 2009/888. As to the approach of the court when sentencing an offender for an evasion of a control order see *R v Knight* [2008] EWCA Crim 478, [2008] 2 Cr App Rep (S) 425, [2008] All ER (D) 100 (Feb). See also *R (on the application of Melli Bank plc) v HM Treasury* [2008] EWHC 1661 (Admin), [2008] All ER (D) 119 (Jul), DC (validity of freezing of assets of English subsidiary of Iranian bank pursuant to control order).

6 Goods may be described in the order wholly or partly by reference to the uses to which the goods, or any information recorded on or derived from them, may be put: Export Control Act 2002 s 1(3).

7 Export Control Act 2002 s 1(2). As to the meaning of 'United Kingdom' see PARA 806 note 7. Export controls may be imposed in relation to the removal from the United Kingdom of vehicles, vessels and aircraft as an exportation of goods, whether or not they are moving under their own power or carrying goods or passengers: s 1(6). The removal of goods to the Isle of Man is not to be regarded as an exportation of those goods: s 11(3). The Act, so far as it relates to the imposition of export controls, is an Act relating to customs for the purposes of the definition of 'the customs and excise Acts' in the Customs and Excise Management Act 1979 s 1 (see **CUSTOMS AND EXCISE** vol 12(2) (2007 Reissue) PARA 398): Export Control Act 2002 s 11(4). The power to impose export controls is subject to s 5 (see PARA 812): s 1(4).

8 'Technology' means information, including information comprised in software, that is capable of use in connection with: (1) the development, production or use of any goods or software; (2) the development of, or the carrying out of, an industrial or commercial activity or an activity of any other kind whatsoever: Export Control Act 2002 s 2(6). Technology may be described in the order wholly or partly by reference to the uses to which it may be put: s 2(3).

9 'Transfer', in relation to any technology, means a transfer by any means, or combination of means, including oral communication and the transfer of goods on which the technology is recorded or from which it can be derived, other than the exportation of such goods: Export Control Act 2002 s 2(6).

10 'Place' includes a vehicle, vessel or aircraft: Export Control Act 2002 s 11(1).

11 Export Control Act 2002 s 2(2)(a).

12 Export Control Act 2002 s 2(2)(b). 'United Kingdom person' means a United Kingdom national, a Scottish partnership or a body incorporated under the law of any part of the United Kingdom: s 11(1). A United Kingdom national is an individual who is a British citizen, a British overseas territories citizen, a British National (Overseas), a British Overseas citizen, a person who under the British Nationality Act 1981 is a British subject, or a British protected person within the meaning of the 1981 Act: Export Control Act 2002 s 11(2). As to British citizenship, British overseas territories citizenship, British national (overseas) status, British overseas citizenship, British subject status and British protected person status, see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 23 et seq.

13 Export Control Act 2002 s 2(2)(c).

14 Export Control Act 2002 s 2(2)(d). The power to impose transfer controls is subject to s 5 (see PARA 812): s 2(4).

15 Export Control Act 2002 s 3(2). The power to impose technical assistance controls may only be exercised for the purpose of imposing controls corresponding to or connected with any export controls or transfer controls imposed under s 1 or 2 (see text and notes 6-14), or any controls imposed by a directly applicable EU provision on the exportation of goods or the transfer of technology: s 3(4)(a); European Union (Amendment) Act 2008 s 3(6). 'EU provision' means a provision of a directive or regulation within the meaning of the Treaty on the Functioning of the European Union (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179) art 288: Export Control Act 2002 s 11(1); European Union (Amendment) Act 2008 s 3(6). The Treaty was formerly known as the Treaty Establishing the European Community; it has been renamed by the Treaty of Lisbon Amending the Treaty Establishing the European Union and the Treaty Establishing the European Community (Lisbon, 13 December 2007; ECS 13 (2007); Cm 7294) and its provisions renumbered by virtue of the Treaty of Amsterdam (OJ C340, 10.11.97, p 1) and by the Treaty of Lisbon. The power to impose technical assistance controls is subject to the Export Control Act 2002 s 5 (see PARA 812): s 3(4)(b).

16 Export Control Act 2002 s 3(2).

17 Export Control Act 2002 s 3(3).

18 Export Control Act 2002 s 3(5).

19 Export Control Act 2002 s 3(7).

20 Export Control Act 2002 s 4(2). The power to impose trade controls may only be exercised for the purpose of imposing controls corresponding to or connected with any export controls or transfer controls imposed under s 1 or 2 (see text and notes 6-14), or any controls imposed by a directly applicable EU provision on the exportation of goods or the transfer of technology: s 4(4)(a). The power to impose trade controls is subject to s 5 (see PARA 812): s 4(4)(b).

21 Export Control Act 2002 s 4(3).

22 Export Control Act 2002 s 4(6).

23 Export Control Act 2002 s 4(7). Trade controls may be imposed on acts done outside the United Kingdom and the Isle of Man, but only if they are done by a person who is, or is acting under the control of, a United Kingdom person: s 4(8).

24 Export Control Act 2002 s 1(5).

25 Export Control Act 2002 s 2(5).

26 Export Control Act 2002 s 3(6).

27 Export Control Act 2002 s 4(5).

28 In under the European Communities Act 1972 s 2(2). See the Sudan (Technical Assistance and Financing and Financial Assistance) (Penalties and Licences) Regulations 2004, SI 2004/373 (amended by SI 2005/3389); the Zimbabwe (Sale, Supply, Export, Technical Assistance, Financing and Financial Assistance and Shipment of Equipment) (Penalties and Licences) Regulations 2004, SI 2004/559 (amended by SI 2005/3389); the Lebanon (Technical Assistance, Financing and Financial Assistance) (Penalties and Licences) Regulations 2006, SI 2006/2681; the Export Control (North Korea) Order 2007, SI 2007/1334; the Export Control (Iran) Order 2007, SI 2007/1526 (amended by SI 2007/2170 and SI 2008/3063); and the Export Control (Burma) Order 2008, SI 2008/1098.

See also the Zimbabwe (Freezing of Funds and Economic Resources) Regulations 2004, SI 2004/816; the Liberia (Freezing of Funds and Economic Resources) Regulations 2004, SI 2004/1264 (amended by SI 2004/1710, SI 2004/2574); the Burma (Financial Sanctions) Regulations 2005, SI 2005/1526; the International Criminal Tribunal for the Former Yugoslavia (Financial Sanctions Against Indictees) Regulations 2005, SI 2005/1527; and the Iran (European Community Financial Sanctions) Regulations 2007, SI 2007/1374.

UPDATE

811 Control powers

NOTES 5, 28--SI 2007/1526 further amended: SI 2010/144. See also Export Control (Guinea) Order 2010, SI 2010/364.

NOTE 5--SI 2007/1334 amended: SI 2008/3231, SI 2010/132.

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812. Restriction on control powers.

Controls of any kind may only be imposed for the purpose of giving effect to any European Union (EU) provision¹ or other international obligation² of the United Kingdom³, and as described below⁴. Export controls⁵ and trade controls⁶ may be imposed in relation to: (1) military equipment⁷; (2) goods on which military technology⁸ is recorded or from which it can be derived; or (3) goods intended, designed or adapted for use in the development or production of military equipment or military technology⁹. Transfer controls¹⁰ may be imposed in relation to: (a) military technology; or (b) technology intended, designed or adapted for use in the development or production of military technology¹¹. Technical assistance controls¹² may be imposed in relation to any services connected with the development, production or use of goods falling within head (1), (2) or (3), or any technology falling within head (a) or (b)¹³.

Further, export controls may be imposed in relation to any goods the exportation or use of which is capable of having a relevant consequence¹⁴; transfer controls may be imposed in relation to any technology the transfer¹⁵ or use of which is capable of having such a consequence¹⁶; technical assistance controls may be imposed in relation to any technical assistance¹⁷ the provision or use of which is capable of having such a consequence¹⁸; and trade controls may be imposed in relation to any goods the acquisition, disposal, movement or use of which is capable of having such a consequence¹⁹. A relevant consequence, in relation to any activity, is a consequence, direct or indirect, of a kind relating to²⁰: (i) the national security of the United Kingdom, any dependency²¹, any member state or any other friendly state²²; (ii) the peace, security or stability in any region of the world or within any country²³; (iii) weapons of mass destruction²⁴; (iv) breaches of international law and human rights²⁵; (v) terrorism and crime²⁶.

However, the restrictions described above do not apply to the power to impose any controls if the control order²⁷ which imposes them provides for its expiry no later than the end of the period of 12 months beginning with the day on which it is made²⁸. Further, the restrictions do not apply in relation to provisions of a control order which amend an earlier control order²⁹ or revoke and re-enact, with or without modifications, provisions of an earlier control order, unless they impose new controls or strengthen the controls previously imposed³⁰.

1 As to the meaning of 'EU provision' see PARA 811 note 15.

2 'International obligation' includes an obligation relating to a joint action or common position adopted, or a decision taken, by the Council of the European Union under provisions of the Treaty on European Union (Maastricht, 7 February 1992; Cm 1934; TS 12 (1994); Cm 2485) on a common foreign and security policy: Export Control Act 2002 s 5(3).

3 As to the meaning of 'United Kingdom' see PARA 806 note 7.

4 Export Control Act 2002 s 5(1), (2).

5 As to the meaning of 'export controls' see PARA 811.

6 As to the meaning of 'trade controls' see PARA 811.

7 'Military equipment' includes firearms and other weapons, whether or not intended, designed or adapted for military use or in military use, and goods intended, designed or adapted for military use, whether or not in military use: Export Control Act 2002 Schedule para 1(4). The reference to firearms and other weapons includes

a reference to component parts of firearms or other weapons, accessories for use with firearms or other weapons, and ammunition, missiles or projectiles of any kind which are intended, designed or adapted for use with firearms or other weapons: Schedule para 1(5).

The Secretary of State may by order modify the provisions of the Schedule: s 12(1). Such an order may make transitional provision in connection with any modification made by the order: s 12(2). A statutory instrument containing such an order may not be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament: s 13(4). See **PARLIAMENT** vol 34 (Reissue) PARA 944. As to the Secretary of State see PARA 802.

8 'Military technology' includes technology intended, designed or adapted for military use, whether or not in military use, and technology intended, designed or adapted for use in connection with the development, production or use of military equipment or goods falling within head (3) of the text: Export Control Act 2002 Schedule para 1(4). As to the meaning of 'technology' see PARA 811 note 8.

9 Export Control Act 2002 s 5(4), (7), Schedule para 1(1). Export controls may be imposed in relation to objects of cultural interest: Schedule para 4. 'Objects of cultural interest' includes objects of historical or scientific interest: s 11(1). See also the Export of Objects of Cultural Interest (Control) Order 2003, SI 2003/2759; and PARA 816.

10 As to the meaning of 'transfer controls' see PARA 811.

11 Export Control Act 2002 s 5(5), Schedule para 1(2).

12 As to the meaning of 'technical assistance controls' see PARA 811.

13 Export Control Act 2002 s 5(6), Schedule para 1(3).

14 Export Control Act 2002 Schedule para 2(1).

15 As to the meaning of 'transfer' see PARA 811 note 9.

16 Export Control Act 2002 Schedule para 2(2).

17 As to the meaning of 'technical assistance' see PARA 811.

18 Export Control Act 2002 Schedule para 2(3).

19 Export Control Act 2002 Schedule para 2(4).

20 Export Control Act 2002 Schedule para 3(1).

21 'Dependency' means the Isle of Man, any of the Channel Islands or a British overseas territory: Export Control Act 2002 Schedule para 3(4).

22 Export Control Act 2002 Schedule para 3(2A).

23 Export Control Act 2002 Schedule para 3(2B). 'Country' includes a territory but does not include the United Kingdom or the Isle of Man: Schedule para 3(4).

24 Export Control Act 2002 Schedule para 3(2C).

25 Export Control Act 2002 Schedule para 3(2D).

26 Export Control Act 2002 Schedule para 3(2E). The question whether an activity involving goods, technology or technical assistance of any particular description is capable of having a relevant consequence is to be determined by the Secretary of State at the time the order imposing the controls is made: Schedule para 3(3).

27 'Control order' means an order under Export Control Act 2002 s 1(1), 2(1), 3(1) or 4(1) (see PARA 811): s 11(1).

28 Export Control Act 2002 s 6(1). A statutory instrument containing a control order made by virtue of s 6(1) must be laid before Parliament after being made but, unless it is approved by a resolution of each House before the end of the period of 40 days beginning with the day on which it is made, ceases to have effect at the end of that period: s 13(2). In reckoning that period no account is to be taken of any time during which Parliament is dissolved or prorogued or during which either House is adjourned for more than four days: s 13(3).

29 An 'earlier control order' does not include an order made by virtue of the Export Control Act 2002 s 6(1): s 6(3).

30 Export Control Act 2002 s 6(2).

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813. Use of control powers.

An order¹ may, without prejudice to the generality of the power under which it is made, make provision: (1) for an activity to be prohibited unless authorised by a licence granted by a specified person²; (2) creating exceptions from any provision of the order³; (3) requiring persons to keep, and produce, records⁴; (4) requiring persons to provide information to any specified person⁵; (5) about the purposes for which information held in connection with anything done under or by virtue of the order may be used⁶; (6) about the persons to whom any such information may be disclosed⁷; (7) creating offences⁸; and (8) for the enforcement of the order, including provision as to the powers and duties of any person who is to enforce it⁹.

Such an order may: (a) make provision binding the Crown; (b) amend, repeal or revoke, or apply, with or without modifications, provisions of any Act or subordinate legislation; (c) provide for any reference in the order to a document, including a technical list by reference to which any European Union (EU) provision¹⁰ or international obligation¹¹ operates, to take effect as a reference to that document as revised or re-issued from time to time; (d) make incidental, supplementary and transitional provision; and (e) make different provision for different cases and different circumstances¹².

The Secretary of State¹³ may not make a control order¹⁴ which has the effect of prohibiting or regulating the communication of information in the ordinary course of scientific research¹⁵, the making of information generally available to the public¹⁶, or the communication of information that is generally available to the public¹⁷, unless the interference by the order in the freedom to carry on the activity in question is necessary, and no more than is necessary¹⁸.

1 ie an order made under the Export Control Act 2002 ss 1-6: see PARAS 811-812.

2 Export Control Act 2002 s 7(1)(a).

3 Export Control Act 2002 s 7(1)(b).

4 Export Control Act 2002 s 7(1)(c).

5 Export Control Act 2002 s 7(1)(d).

6 Export Control Act 2002 s 7(1)(e).

7 Export Control Act 2002 s 7(1)(f).

8 Export Control Act 2002 s 7(1)(g). Such offences may be indictable, summary or triable either way, subject to the limitation that no offence so created may be punishable on indictment with imprisonment for a term exceeding 10 years: s 7(1)(g).

9 Export Control Act 2002 s 7(1)(h).

10 As to the meaning of 'EU provision' see PARA 811 note 15.

11 As to the meaning of 'international obligation' see PARA 812 note 2.

12 Export Control Act 2002 s 7(2).

13 As to the Secretary of State see PARA 802. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 802 note 21.

14 As to the meaning of 'control order' see PARA 812 note 27.

15 Export Control Act 2002 s 8(1)(a).

16 Export Control Act 2002 s 8(1)(b).

17 Export Control Act 2002 s 8(1)(c).

18 Export Control Act 2002 s 8(1). The question whether any such interference is necessary is to be determined by the Secretary of State by reference to the circumstances prevailing at the time the order is made and having considered the reasons for seeking to control the activity in question and the need to respect the freedom to carry on that activity: s 8(2).

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814. Guidance about the exercise of functions under control orders; annual reports.

The Secretary of State¹ may give guidance² about any matter relating to the exercise of licensing powers or other functions³, but must give guidance about the general principles to be followed when exercising licensing powers or other functions⁴. Any person exercising such a licensing power or other function must have regard to any guidance which relates to that power or function⁵.

The Secretary of State must lay before Parliament in respect of each year a report on the operation during the year of an export order so far as relating to the export of objects of cultural interest⁶ and a report on other matters relating to the operation of the Export Control Act 2002, and any order made under it, during the year⁷.

1 As to the Secretary of State see PARA 802. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 802 note 21.

2 'Guidance' means guidance stating that it is given under the Export Control Act 2002 s 9: s 9(7). A copy of any guidance must be laid before Parliament and published in such manner as the Secretary of State may think fit: s 9(6).

3 Export Control Act 2002 s 9(2). The licensing powers and other functions referred to are those conferred by a control order on any person in connection with controls imposed under the Export Control Act 2002: s 9(1). As to the meaning of 'control order' see PARA 812 note 27.

4 Export Control Act 2002 s 9(3). The guidance required by s 9(3) must include guidance about the consideration, if any, to be given, when exercising such powers, to issues relating to sustainable development, and issues relating to any possible consequences of the activity being controlled that are relevant consequences: s 9(4). As to the meaning of 'relevant consequence' see PARA 812. Section 9(4) does not restrict the matters which may be addressed in guidance: s 9(4).

5 Export Control Act 2002 s 9(5). The consolidated criteria relating to export licensing decisions announced to Parliament by the Secretary of State on 26 October 2000 must, until withdrawn or varied under s 9, be treated as guidance which is given and published under s 9, and fulfils the duty imposed by s 9(3) in respect of any export controls and transfer controls which may be imposed in relation to goods or technology of a description falling within the Schedule para 1 or 2 (see PARA 812): s 9(8). As to the meaning of 'export controls', 'transfer controls' and 'technology' see PARA 811.

6 Export Control Act 2002 s 10(1)(a). As to objects of cultural interest see PARA 812 note 9.

7 Export Control Act 2002 s 10(1)(b). A report required by s 10(1) must be laid before Parliament as soon as practicable after the end of the year to which it relates: s 10(2).

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(iii) Particular Controls

A. IMPORT OF GOODS

815. Import licences.

All goods¹, other than goods which are proved to the satisfaction of the Commissioners for Revenue and Customs to have been consigned from the Channel Islands², are prohibited to be imported into the United Kingdom³ except under the authority of a licence⁴ granted by the Secretary of State⁵ and in accordance with any condition⁶ attached to the licence⁷. The Secretary of State may modify or revoke the licence at any time⁸. Any licence which may have been granted in connection with an application for which any person makes any statement or furnishes any document or information which to his knowledge is false in a material particular, or recklessly makes any statement which is false in a material particular, is void as from the time the licence was granted⁹.

1 Unless otherwise specified, 'goods' means both used and unused goods: Import of Goods (Control) Order 1954, SI 1954/23, art 6(1). The order was made in the exercise of powers under the Import, Export and Customs Powers (Defence) Act 1939 s 1 (see PARA 808) and came into operation on 21 January 1954 (see the Import of Goods (Control) Order 1954, SI 1954/23, art 8). As to the meaning of 'goods' for the purposes of the Import, Export and Customs Powers (Defence) Act 1939 see PARA 808 note 6.

2 See the Import of Goods (Control) Order 1954, SI 1954/23, art 3 (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)). This exception does not, however, extend to: (1) the following dyes, dyestuffs and intermediates: (a) synthetic organic dyestuffs, including pigment dyestuffs, whether soluble or insoluble; (b) compounds, preparations and articles manufactured from any such dyestuffs, except any such compounds, preparations and articles as are not suitable for use in dyeing; (c) organic intermediate products used in the manufacture of any such dyestuffs; (2) the following arms and ammunition: (a) lethal firearms, including any lethal barrelled weapon of any description from which any shot, bullet or other missile can be discharged and other weapons of whatever description designed or adapted for the discharge of any noxious liquid, gas or other thing; (b) component parts of any such firearm or such other weapon, any accessory to any such firearm or other weapon designed or adapted to diminish the noise or flash caused by firing the weapon; (c) ammunition, including grenades, bombs and other like missiles, and any ammunition containing or designed or adapted to contain any noxious liquid, gas or other thing, and component parts of any such ammunition; and (3) plumage, other than plumage of birds imported alive and other than plumage of birds ordinarily used in the United Kingdom as articles of diet: Import of Goods (Control) Order 1954, SI 1954/23, art 3(a)-(c). As to the Commissioners for Revenue and Customs see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 900 et seq.

3 Import of Goods (Control) Order 1954, SI 1954/23, art 1. As to the meaning of 'United Kingdom' see PARA 806 note 7; but cf PARA 808 note 5.

4 Licences may be individual (ie enabling specified individuals or classes to import specified goods) or general (ie enabling persons generally to import certain goods from certain countries without the need to apply for an individual licence).

5 Import of Goods (Control) Order 1954, SI 1954/23, art 2. As to the Secretary of State see PARAS 802, 808 note 3.

6 A licence granted under the Import of Goods (Control) Order 1954, SI 1954/23, art 2 permitting goods to be imported for transit or transhipment may be granted subject to either or both of the following conditions: (1) that the goods be exported to a specified destination; (2) that they be exported within a specified time: art 2A(1)(a), (b) (art 2A added by SI 1978/806). If goods are imported under the authority of such a licence and any such condition imposed by the licence is contravened or not complied with, the goods are liable to forfeiture: Import of Goods (Control) Order 1954, SI 1954/23, art 2A(2) (as so added).

7 Import of Goods (Control) Order 1954, SI 1954/23, art 2. As to the compatibility of import licences with European Union law see **CUSTOMS AND EXCISE** vol 12(2) (2007 Reissue) PARA 19.

8 Import of Goods (Control) Order 1954, SI 1954/23, art 5(1).

9 Import of Goods (Control) Order 1954, SI 1954/23, art 4. In addition, that person commits an offence for which he is liable on summary conviction to a fine not exceeding £500 or to imprisonment for a term not exceeding six months, or to both: art 4.

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B. EXPORT OF GOODS

(A) OBJECTS OF CULTURAL INTEREST

816. Export of objects of cultural interest.

Subject to the provisions of the Export of Objects of Cultural Interest (Control) Order 2003¹, all objects² are prohibited to be exported³ to any destination except under the authority of a licence in writing granted by the Secretary of State⁴, and in accordance with all the conditions attached to the licence⁵. The Secretary of State may also grant an EU licence⁶ under the relevant European Union law. An EU licence or a licence granted by the Secretary of State may be: (1) general or specific; (2) unlimited or limited so as to expire on a specified date unless renewed; and (3) subject to or without conditions, and any such condition may require any act or omission before or after the exportation of objects under the licence⁷. Any such licence may be varied, suspended or revoked by the Secretary of State at any time and in such circumstances and on such terms as the Secretary of State thinks fit, by serving a notice to that effect on the holder of the licence⁸.

Where for the purpose of obtaining a licence under the 2003 Order or an EU licence, any person either: (a) makes any statement or furnishes any document or information which to his knowledge is false in a material particular; or (b) recklessly makes any statement or furnishes any document or information which is false in a material particular, he is guilty of an offence⁹.

Any person who has done any act under the authority of a licence granted under the 2003 Order or an EU licence and fails to comply with any condition attaching to that licence, is guilty of an offence¹⁰. However, no person is guilty of such an offence where: (i) the licence condition in question had been previously modified by the Secretary of State; and (ii) the alleged failure to comply would not have been a failure had the licence not been so modified; and (iii) the condition with which he failed to comply was modified, otherwise than with his consent, by the Secretary of State after the doing of the act authorised by the licence¹¹.

Any person who exports or ships objects or cultural goods¹², must, if so required by the Commissioners for Revenue and Customs, furnish within such time as the Commissioners may determine, evidence of the destination to which the objects or cultural goods were delivered and, if he fails to do so, he is guilty of an offence¹³.

It is the duty of the Commissioners to take such action as they consider appropriate to secure the enforcement of the 2003 Order and of the relevant European Union legislation in respect of the export of cultural goods¹⁴.

Information¹⁵ which is held by the Secretary of State or the Commissioners in connection with the operation of controls imposed by the 2003 Order or by any directly applicable European Union provision on the exportation of cultural goods may be used for the purposes of, or for any purposes connected with: (A) the exercise of functions in relation to any control imposed by the 2003 Order or by any order made under the Export Control Act 2002; (B) giving effect to any European Union or other international obligation of the United Kingdom; (C) facilitating the exercise by an authority or international organisation outside the United Kingdom of functions which correspond to functions conferred by or in connection with any activity subject to any control by the 2003 Order or by any order made under the Export Control Act 2002, and may be disclosed to any person for use for these purposes¹⁶. No disclosure of information may be

made by virtue of this provision unless the Secretary of State is, or the Commissioners are, satisfied that the making of the disclosure is proportionate to what is sought to be achieved by it¹⁷. Nothing in these provisions is to be taken to prejudice any power to disclose information which exists apart from them¹⁸.

1 In the Export of Objects of Cultural Interest (Control) Order 2003, SI 2003/2759. The Order came into force on 1 May 2004: see art 1(1).

2 'Objects' mean objects of cultural interest of a description specified in and not excluded from the Export of Objects of Cultural Interest (Control) Order 2003, SI 2003/2759, Schedule: art 1(2). The objects so specified are any objects of cultural interest manufactured or produced more than 50 years before the date of exportation except: (1) postage stamps and other articles of philatelic interest; (2) birth, marriage or death certificates or other documents relating to the personal affairs of the exporter or the spouse of the exporter; (3) letters or other writings written by or to the exporter or the spouse of the exporter; and (4) goods exported by, and being the personal property of, the manufacturer or producer thereof, or the spouse, widow or widower of that person: Schedule.

3 'Exportation' includes shipment as stores and, unless the context otherwise requires, means exportation from the United Kingdom to any destination except for the Isle of Man: Export of Objects of Cultural Interest (Control) Order 2003, SI 2003/2759, art 1(2). As to the meaning of 'United Kingdom' see PARA 806 note 7.

4 As to the Secretary of State see PARA 802. The Secretary of State here concerned is the Secretary of State for Culture, Media and Sport.

5 Export of Objects of Cultural Interest (Control) Order 2003, SI 2003/2759, art 2.

6 'EU licence' means an authorisation granted by the Secretary of State (whether before or after commencement of the Export of Objects of Cultural Interest (Control) Order 2003, SI 2003/2759) under EC Council Regulation 3911/92 (OJ L395, 31.12.1992, p 1) on the export of cultural goods: see the Export of Objects of Cultural Interest (Control) Order 2003, SI 2003/2759, art 1(2); and the European Union (Amendment) Act 2008 s 3(6).

7 Export of Objects of Cultural Interest (Control) Order 2003, SI 2003/2759, art 3(1).

8 Export of Objects of Cultural Interest (Control) Order 2003, SI 2003/2759, art 3(2).

9 Export of Objects of Cultural Interest (Control) Order 2003, SI 2003/2759, art 4(1). A person guilty of such an offence is liable, on summary conviction, to a fine of the prescribed sum and, on conviction on indictment, to a fine of any amount, or imprisonment for a term not exceeding two years, or to both, and any licence which may have been granted in connection with the application for which the false statement was made or the false document or information furnished, is void as from the time it was granted: art 4(2). As to the prescribed sum see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 141.

10 Export of Objects of Cultural Interest (Control) Order 2003, SI 2003/2759, art 5(1). A person guilty of such an offence is liable, on summary conviction to a fine of the prescribed sum and, on conviction on indictment to a fine of any amount, or imprisonment for a term not exceeding two years, or to both: art 5(2).

11 Export of Objects of Cultural Interest (Control) Order 2003, SI 2003/2759, art 5(2).

12 'Cultural goods' has the same meaning as that given in EC Council Regulation 3911/92 (OJ L395, 31.12.1992, p 1) (see the Annex): Export of Objects of Cultural Interest (Control) Order 2003, SI 2003/2759, art 1(2).

13 Export of Objects of Cultural Interest (Control) Order 2003, SI 2003/2759, arts 1(2), 6(1) (art 1(2) amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)). Any person guilty of such an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale: Export of Objects of Cultural Interest (Control) Order 2003, SI 2003/2759, art 6(2). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142. As to the Commissioners for Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 900 et seq.

14 Export of Objects of Cultural Interest (Control) Order 2003, SI 2003/2759, art 7(1), (2).

15 For these purposes, 'information' is any information that relates to a particular business or other activity carried on by a person: Export of Objects of Cultural Interest (Control) Order 2003, SI 2003/2759, art 8(4). The information that may be disclosed by virtue of art 8 includes information obtained before the commencement of the 2003 Order: art 8(6).

- 16 Export of Objects of Cultural Interest (Control) Order 2003, SI 2003/2759, art 8(1), (2).
- 17 Export of Objects of Cultural Interest (Control) Order 2003, SI 2003/2759, art 8(3).
- 18 Export of Objects of Cultural Interest (Control) Order 2003, SI 2003/2759, art 8(6).

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(B) PROHIBITIONS AND CONTROLS

817. Prohibited goods.

In exercise of his power to regulate the export of goods¹, the Secretary of State² has imposed export and transfer controls on specified categories of goods, including technical assistance, which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment, and on trade in dual-use items³, including the transmission of software⁴ or technology⁵ in intangible form⁶.

Subject to exceptions⁷, no person may export⁸ military⁹ goods or transfer military software or technology by electronic means¹⁰.

Subject to exceptions¹¹, no person may export UK controlled¹² dual-use goods or transfer UK controlled dual-use software or technology by electronic means¹³: (1) to a destination specified¹⁴ as a prohibited destination in relation to the goods, software or technology in question¹⁵; or (2) where the destination is not a prohibited destination but the exporter or transferor knows both that the final destination of the goods, software or technology is a prohibited destination and that no processing or working is to be performed on the goods, software or technology in question before they are exported or transferred to that final destination¹⁶.

Where a person (the 'inquirer') has grounds for suspecting that dual-use goods, software or technology are or may be intended, in their entirety or in part, for WMD purposes¹⁷ and the goods, software or technology in question are not specified in the dual-use Regulation¹⁸, then subject to the licensing provisions¹⁹, the inquirer must not export the goods in question or transfer the software or technology in question by electronic means, to a destination outside the customs territory²⁰ unless, having made all reasonable inquiries as to the proposed use of the goods, software or technology in question, the inquirer is satisfied that they will not be used for WMD purposes²¹.

Where: (a) a person (the 'relevant person') knows that the final destination of dual-use goods, software or technology is outside the customs territory, and that no processing or working is to be performed on the goods, software or technology in question within the customs territory; (b) the relevant person would only be permitted to export or transfer the goods, software or technology in question to a destination outside the customs territory to the extent authorised to do so under the dual-use Regulation²²; and (c) the goods, software or technology in question are not specified in the dual-use Regulation²³, then, subject to exceptions²⁴, the relevant person must not export the goods in question, or transfer the software or technology in question by electronic means, to a destination within the customs territory²⁵.

Subject to exceptions²⁶, no person may export specified goods²⁷ in relation to which there is no export authorisation requirement²⁸ under the dual-use Regulation because the goods are in transit²⁹. Where a person (the 'exporter') would only be permitted to export dual-use goods either to the extent authorised to do so under the dual-use Regulation³⁰ or after complying with the requirement under that Regulation to notify the competent authority in the case of awareness of end-use for WMD purposes³¹, if those provisions applied but the provisions do not apply because the goods are in transit, then subject to the licensing provisions, the exporter must not export the goods in question³².

Subject to the licensing provisions, no person may export: (i) gangchains and leg-irons specially designed for restraining human beings; (ii) electric-shock belts³³; or (iii) portable electric shock

devices³⁴, to a destination within the customs territory³⁵; and, subject to the licensing provisions, no person may export goods within head (i) or (iii) above in relation to which there is no export authorisation requirement under the torture Regulation³⁶ because the goods are in transit³⁷.

Where a person (the 'transferor') has been informed by the Secretary of State that software or technology is or may be intended, in its entirety or in part, for WMD purposes, or is aware that software or technology is intended, in its entirety or in part, for WMD purposes, and knows that it may be or is intended to be used outside the customs territory or has been informed by the Secretary of State that it may be or is intended to be so used, then, subject to exceptions³⁸, the transferor must not transfer³⁹ the software or technology in question to a person or place within the United Kingdom⁴⁰.

Where a United Kingdom person (the 'transferor') has been informed by a competent authority that software or technology is or may be intended, in its entirety or in part, for WMD purposes, or is aware that software or technology is intended, in its entirety or in part, for WMD purposes, then, subject to exceptions⁴¹, the transferor must not transfer the software or technology in question from a place outside the customs territory to: (A) a destination outside the customs territory; or (B) a destination within the customs territory if the transferor knows that the final destination of the software or technology is outside the customs territory and knows that no processing or working is to be performed on the software or technology within the customs territory, or, if the destination is the United Kingdom, knows that the software or technology may be or is intended to be used outside the customs territory or has been informed by the Secretary of State that it may be or is intended to be so used⁴².

Where a person (the 'transferor') has been informed by the Secretary of State that software or technology is or may be intended, in its entirety or part, for WMD purposes, or is aware that software or technology is intended, in its entirety or in part, for WMD purposes, then subject to exceptions⁴³, the transferor must not transfer the software or technology in question by non-electronic means to a destination outside the customs territory or a destination within the customs territory if the transferor knows that the final destination of the software or technology is outside the customs territory and knows that no processing or working is to be performed on the software or technology within the customs territory⁴⁴.

1 le under the Export Control Act 2002: see PARA 811.

2 As to the Secretary of State see PARA 802.

3 'Dual-use' in relation to goods, software or technology (see notes 4-5), means usable for both civil and military purposes: Export Control Order 2008, SI 2008/3231, art 2(1); and see text and notes 11-32. Except in the definition of category C goods (see PARA 822 note 28), tangible storage media on which dual-use software or technology is recorded are taken to be dual-use goods: art 2(2).

4 'Software' means one or more programmes or microprogrammes fixed in any tangible medium of expression; 'programme' means a sequence of instructions to carry out a process in, or convertible into, a form executable by an electronic computer; and 'microprogramme' means a sequence of elementary instructions, maintained in a special storage, the execution of which is initiated by the introduction of its reference instruction into an instruction register: Export Control Order 2008, SI 2008/3231, art 2(1).

5 'Technology' means information (including but not limited to information comprised in software and documents such as blueprints, manuals, diagrams and designs) that is capable of use in connection with the development, production or use of any goods: Export Control Order 2008, SI 2008/3231, art 2(1).

6 See the Export Control Order 2008, SI 2008/3231, Pt 2 (arts 3-18). The Order came into force on 6 April 2009: see art 1. It does not apply to:

5 (1) any export of goods, transfer of technology or participation in the provision of technical assistance; or

6 (2) any activity which facilitates, or is otherwise connected with, the acquisition, disposal or movement of goods,

that takes place in accordance with the terms of a licence granted before 6 April 2009 under the legislation revoked by art 45(1), Sch 6, or under the dual-use Regulation or the torture Regulation, or to any such licence: Export Control Order 2008, SI 2008/3231, art 45(2). To the extent that, owing to art 45(2), the 2008 Order does not apply, the revoked legislation continues to apply: art 45(3).

'Dual-use Regulation' means EC Council Regulation 1334/2000 (OJ L159, 30.6.2000, p 1) as amended from time to time; and 'torture Regulation' means EC Council Regulation 1236/2005 (OJ L200, 30.7.2005, p 1) as amended from time to time: see the Export Control Order 2008, SI 2008/3231, art 2(1).

7 Is subject to the Export Control Order 2008, SI 2008/3231, arts 13-18, 26: see PARAS 818-821, 823.

8 'Exportation' is to be construed as follows: (1) unless the context otherwise requires, it only includes removal from the United Kingdom to a destination outside the United Kingdom and the Isle of Man; (2) it includes shipment as stores; (3) in relation to a vessel, vehicle, submersible vehicle or aircraft, it includes taking it out of the United Kingdom, notwithstanding that it is conveying goods or passengers and whether or not it is moving under its own power; and cognate expressions are to be construed accordingly: Export Control Order 2008, SI 2008/3231, art 2(1). As to the meaning of 'United Kingdom' see PARA 806 note 7. 'Shipment' (and cognate expressions) and 'stores' have the same meanings as in the Customs and Excise Management Act 1979 (see PARAS 831 note 9, 808 note 6 respectively): Export Control Order 2008, SI 2008/3231, art 2(1). 'Vessel' includes any ship, surface effect vehicle, vessel of small waterplane area or hydrofoil, and the hull or part of the hull of a vessel; 'surface effect vehicle' means any air cushion vehicle (whether side wall or skirted) and any vehicle using the wing-in-ground effect for positive lift; 'vehicle' includes a railway carriage; and 'aircraft' means a fixed wing, swivel wing, rotary wing, tilt rotor or tilt wing vehicle or helicopter: art 2(1).

9 'Military' in relation to goods, software and technology, means listed in the Export Control Order 2008, SI 2008/3231, Sch 2: art 2(1). Except in the definition of category C goods (see PARA 822 note 28), tangible storage media on which military software or technology is recorded are taken to be military goods: art 2(2). The items listed in Sch 2 are military, security and para-military goods, software and technology and arms, ammunition and related materiel (Sch 2 Pt 1 (amended by SI 2009/1305)), and explosive-related goods and technology (Export Control Order 2008, SI 2008/3231, Sch 2 Pt 2). Schedule 2 is not set out in detail in this work; it is based on the Wassenaar Arrangement military list.

10 See the Export Control Order 2008, SI 2008/3231, art 3. 'Transfer by electronic means', in relation to software or technology, means transmission by facsimile, telephone or other electronic media (except that oral transmission of technology by telephone is included only where the technology is contained in a document the relevant part of which is read out over the telephone, or is described over the telephone in such a way as to achieve substantially the same result as if it had been so read): art 2(1).

11 Is subject to the Export Control Order 2008, SI 2008/3231, arts 13, 14, 17, 18, 26: see PARAS 818, 820, 821, 823.

12 'UK controlled' in relation to dual-use goods, software and technology, means listed in the Export Control Order 2008, SI 2008/3231, Sch 3: art 2(1). Such goods are specified materials, chemicals, micro-organisms and toxins; telecommunications and related technology; detection equipment; vessels and related software and technology; and aircraft and related technology: see Sch 3 (amended by SI 2010/121). Schedule 3 is not set out in detail in this work.

13 See the Export Control Order 2008, SI 2008/3231, art 4(1) (art 4 substituted by SI 2010/121).

14 Is specified in the Export Control Order 2008, SI 2008/3231, Sch 3.

15 See the Export Control Order 2008, SI 2008/3231, art 4(2) (as substituted: see note 13).

16 See the Export Control Order 2008, SI 2008/3231, art 4(3) (as substituted: see note 13).

17 'WMD purposes' means use in connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or other nuclear explosive devices, or the development, production, maintenance or storage of missiles capable of delivering such weapons: Export Control Order 2008, SI 2008/3231, art 2(1).

18 Is in EC Council Regulation 1334/2000 (OJ L159, 30.6.2000, p 1) Annex I.

19 Is the Export Control Order 2008, SI 2008/3231, art 26: see PARA 823.

20 'Customs territory' means the customs territory described in EEC Council Regulation 2913/92 (OJ L302, 19.10.1992, p 1) art 3 as amended from time to time until its repeal by EC Council Regulation 450/2008 (OJ L145, 4.6.2008, p 1) and then the customs territory described in art 3 of the latter Regulation as amended from time to time: Export Control Order 2008, SI 2008/3231, art 2(1).

- 21 See the Export Control Order 2008, SI 2008/3231, art 6.
- 22 le under EC Council Regulation 1334/2000 (OJ L159, 30.6.2000, p 1) art 3 (controls on listed goods) or art 4 (end-use controls).
- 23 le in EC Council Regulation 1334/2000 (OJ L159, 30.6.2000, p 1) Annex IV.
- 24 le subject to the Export Control Order 2008, SI 2008/3231, arts 17, 26: see PARAS 820, 823.
- 25 See the Export Control Order 2008, SI 2008/3231, art 7.
- 26 le subject to the Export Control Order 2008, SI 2008/3231, arts 17, 26: see PARAS 820, 823.
- 27 le specified in EC Council Regulation 1334/2000 (OJ L159, 30.6.2000, p 1) Annex I.
- 28 le under EC Council Regulation 1334/2000 (OJ L159, 30.6.2000, p 1) art 3(1) (controls on listed goods).
- 29 See the Export Control Order 2008, SI 2008/3231, art 8(1).
- 30 le under EC Council Regulation 1334/2000 (OJ L159, 30.6.2000, p 1) art 4(1) (WMD purposes end-use control).
- 31 le under EC Council Regulation 1334/2000 (OJ L159, 30.6.2000, p 1) art 4(4). 'Competent authority' means the Secretary of State or any other authority that is from time to time empowered to grant authorisations under the dual-use Regulation: Export Control Order 2008, SI 2008/3231, art 2(1).
- 32 See the Export Control Order 2008, SI 2008/3231, art 8(2), (3).
- 33 le goods within EC Council Regulation 1236/2005 (OJ L200, 30.7.2005, p 1) Annex II item 2.1.
- 34 le goods within EC Council Regulation 1236/2005 (OJ L200, 30.7.2005, p 1) Annex II item 2.1.
- 35 See the Export Control Order 2008, SI 2008/3231, art 9(1), (2).
- 36 le under EC Council Regulation 1236/2005 (OJ L200, 30.7.2005, p 1) art 5 (export authorisation requirement).
- 37 See the Export Control Order 2008, SI 2008/3231, art 9(3).
- 38 le subject to the Export Control Order 2008, SI 2008/3231, arts 18, 26: see PARAS 821, 823.
- 39 'Transfer', in relation to software or technology, means transfer by electronic or non-electronic means (or any combination of electronic and non-electronic means) from a person or place within the United Kingdom to a person or place outside the United Kingdom, except in the Export Control Order 2008, SI 2008/3231, arts 10, 11 where the limitations as to the origin and destination of the transfer do not apply, and cognate expressions are to be construed accordingly: art 2(1). 'Transfer by non-electronic means', in relation to software or technology, means disclosure of software or technology by any means (or combination of means), including oral communication, other than as the exportation of goods or the transfer by electronic means: art 2(1).
- 40 See the Export Control Order 2008, SI 2008/3231, art 10.
- 41 le subject to the Export Control Order 2008, SI 2008/3231, arts 18, 26: see PARAS 821, 823.
- 42 See the Export Control Order 2008, SI 2008/3231, art 11.
- 43 le subject to the Export Control Order 2008, SI 2008/3231, arts 18, 26: see PARAS 821, 823.
- 44 See the Export Control Order 2008, SI 2008/3231, art 12.

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LEGISLATIVE CONTROLS/(1) GENERAL CONTROLS/(iii) Particular Controls/B. EXPORT OF
GOODS/(B) Prohibitions and Controls/818. Exceptions from prohibition: aircraft and vessels.

818. Exceptions from prohibition: aircraft and vessels.

Specific exceptions from particular export and transfer controls¹ are made in respect of aircraft², vessels³, firearms⁴, transit or transhipment⁵, and software and technology⁶.

Nothing in the prohibitions on the movement of UK-controlled dual-use goods⁷ is to be taken to prohibit the exportation⁸ of any aircraft the immediately preceding importation⁹ of which was on a scheduled journey¹⁰ and which is intended for further scheduled journeys¹¹, or to prohibit the exportation of any aircraft on a scheduled journey¹². Nothing in the restrictions on the export of military goods and the transfer of military software or technology by electronic means¹³ is to be taken to prohibit the exportation of any aircraft which is being exported (except to a specified¹⁴ country¹⁵ or destination) after temporary importation into the United Kingdom provided that there has been no change of ownership or registration since such importation and no military goods have been incorporated into the aircraft since such importation other than by way of replacement for a component essential for the departure of the aircraft¹⁶.

Nothing in the restrictions on the export of military goods and the transfer of military software or technology by electronic means or the prohibitions on the movement of UK-controlled dual-use goods¹⁷ is to be taken to prohibit the exportation of any aircraft which is departing temporarily from the United Kingdom on trials¹⁸.

Nothing in the restrictions on the export of military goods and the transfer of military software or technology by electronic means is to be taken to prohibit the exportation of any vessel registered or constructed outside the United Kingdom which is being exported (except to a specified country or destination¹⁹) after temporary importation into the United Kingdom provided that no military goods have been incorporated into the vessel since such importation other than by way of replacement for a component essential for the departure of the vessel²⁰.

Nothing in the prohibitions on the movement of UK-controlled dual-use goods is to be taken to prohibit the exportation of any vessel proceeding on a journey providing transport services in the ordinary course of business²¹.

Nothing in the restrictions on the export of military goods and the transfer of military software or technology by electronic means or the prohibitions on the movement of UK-controlled dual-use goods is to be taken to prohibit the exportation of any vessel which is departing temporarily from the United Kingdom on trials²².

1 See from specified controls provided for by the Export Control Order 2008, SI 2008/3231, arts 3-12: see PARA 817.

2 See the Export Control Order 2008, SI 2008/3231, art 13; and the text and notes 7-18. As to the meaning of 'aircraft' see PARA 817 note 8.

3 See the Export Control Order 2008, SI 2008/3231, art 14; and the text and notes 19-22. As to the meaning of 'vessel' see PARA 817 note 8.

4 See the Export Control Order 2008, SI 2008/3231, arts 15, 16; and PARA 819.

5 See the Export Control Order 2008, SI 2008/3231, art 17; and PARA 820. 'Transit or transhipment', in relation to goods, means transit through the United Kingdom or transhipment with a view to re-exportation of the goods or transhipment of the goods for use as stores: art 2(1). As to the meaning of 'United Kingdom' see PARA 806 note 7.

6 See the Export Control Order 2008, SI 2008/3231, art 18; and PARA 821. As to the meaning of 'software' see PARA 817 note 4; and as to the meaning of 'technology' see PARA 817 note 5.

7 Ie the Export Control Order 2008, SI 2008/3231, art 4: see PARA 817. As to the meanings of 'dual-use' and 'UK-controlled' see PARA 817 notes 3, 12 respectively.

8 As to the meaning of 'exportation' see PARA 817 note 8.

9 'Importation' in relation to a vessel, vehicle, submersible vehicle or aircraft means taking it into the United Kingdom, notwithstanding that it is conveying goods or passengers and whether or not it is moving under its own power and cognate expressions are to be construed accordingly: Export Control Order 2008, SI 2008/3231, art 2(1).

10 'Scheduled journey' means one of a series of journeys which are undertaken between the same two places and which together amount to a systematic service operated in such a manner that its benefits are available to members of the public from time to time seeking to take advantage of it: Export Control Order 2008, SI 2008/3231, art 2(1).

11 Export Control Order 2008, SI 2008/3231, art 13(1) (amended by SI 2010/121).

12 Export Control Order 2008, SI 2008/3231, art 13(3) (amended by SI 2010/121).

13 Ie the Export Control Order 2008, SI 2008/3231, art 3: see PARA 817. As to the meanings of 'military' and 'transfer by electronic means' see PARA 817 notes 9, 10 respectively.

14 Ie specified in the Export Control Order 2008, SI 2008/3231, Sch 4 Pt 1, 2 or 3: see PARAS 820 note 4, 822 note 14.

15 'Country' includes territory: Export Control Order 2008, SI 2008/3231, art 2(1).

16 Export Control Order 2008, SI 2008/3231, art 13(2).

17 Ie nothing in the Export Control Order 2008, SI 2008/3231, art 3 or 4: see PARA 817.

18 Export Control Order 2008, SI 2008/3231, art 13(4) (amended by SI 2010/121).

19 Ie specified in the Export Control Order 2008, SI 2008/3231, Sch 4 Pt 1, 2 or 3.

20 Export Control Order 2008, SI 2008/3231, art 14(1).

21 Export Control Order 2008, SI 2008/3231, art 14(2) (amended by SI 2010/121).

22 Export Control Order 2008, SI 2008/3231, art 14(3) (amended by SI 2010/121).

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819. Exceptions from prohibition: firearms.

Nothing in the restrictions on the export of military goods and the transfer of military software or technology by electronic means¹ is to be taken to prohibit the exportation² of any firearm falling within a specified category under the firearms Directive³, related ammunition and sight using non-electronic image enhancement for use with such a firearm to any destination in a member state if the following apply⁴:

- 7 (1) the firearm, ammunition and sight using non-electronic image enhancement form part of the personal effects of a person (the 'holder') who is in possession of either a European firearms pass which has been issued to the holder⁵ or a document which has been issued to the holder under the corresponding provisions of the law of a member state, which, in either case, relates to the firearm⁶; and
- 8 (2) either: (a) the pass or document referred to in head (1) contains authorisation for the possession of the firearm from the member state of destination and any other member state through which the holder intends that the firearm will pass on its way to that destination; or (b) the holder on request satisfies the proper⁷ officer of Her Majesty's Revenue and Customs at the place of exportation that: (i) the exportation of the firearm is necessary to enable the holder to participate in a specified activity as a hunter or marksman⁸; (ii) the firearm falls within the category appropriate to that activity in accordance with the firearms Directive; and (iii) the exportation or passage of the firearm is not to or through a member state which prohibits or requires an authorisation for the acquisition or possession of the firearm⁹.

An exemption also applies in respect of firearms authorised to be possessed or, as the case may be, purchased or acquired by a firearm certificate or shot gun certificate¹⁰ or a visitor's firearm or shot gun permit¹¹. Nothing in the restrictions on the export of military goods and the transfer of military software or technology by electronic means is to be taken to prohibit the exportation of any firearm to which this exemption applies, related ammunition and sight using non-electronic image enhancement for use with such a firearm to: (A) any destination in a member state by a specified¹² person or body or by the holder of a firearm certificate granted in the Isle of Man¹³; or (B) any other destination other than a specified¹⁴ country or destination¹⁵. The exception only applies, however, if the firearm, related ammunition and sight using non-electronic image enhancement form part of the personal effects of the holder of the relevant certificate or permit and, in a case to which head (B) applies, the certificate or permit is produced by the holder, or the holder's duly authorised agent, with the firearm and, if carried, ammunition and sight to the proper officer of Her Majesty's Revenue and Customs at the place of exportation¹⁶.

1 Ie the Export Control Order 2008, SI 2008/3231, art 3: see PARA 817. As to the meaning of 'software', 'technology', 'military' and 'transfer by electronic means' see PARA 817 notes 4, 5, 9, 10 respectively.

2 As to the meaning of 'exportation' see PARA 817 note 8.

3 Ie within EEC Council Directive 91/477 (OJ L256, 13.9.1991, p 51) on control of the acquisition and possession of weapons (the 'firearms Directive') Annex I category B, C or D (see the Export Control Order 2008, SI 2008/3231, art 2(1)).

4 Export Control Order 2008, SI 2008/3231, art 15(1).

5 'le under the Firearms Act 1968 s 32A: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 687.

6 Export Control Order 2008, SI 2008/3231, art 15(2).

7 'Proper' has the same meaning as in the Customs and Excise Management Act 1979 (see PARA 830 note 3): Export Control Order 2008, SI 2008/3231, art 2(1).

8 'le one of the activities specified in EEC Council Directive 91/477 (OJ L256, 13.9.1991, p 51) art 12(2) (hunters and marksmen).

9 Export Control Order 2008, SI 2008/3231, art 15(3).

10 'le a firearm certificate or shot gun certificate granted under the Firearms Act 1968 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARAS 634-635), or a firearm certificate granted under the Firearms (Northern Ireland) Order 1981, SI 1981/155, or the Firearms Act 1947 (an Act of Tynwald) as amended by the Firearms Act 1968 (an Act of Tynwald) and the Air Guns and Shot Guns, etc Act 1968 (an Act of Tynwald).

11 Export Control Order 2008, SI 2008/3231, art 16(1). The text refers to a visitor's firearm or shot gun permit granted under the Firearms (Amendment) Act 1988 s 17: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 665.

12 'le specified in EEC Council Directive 91/477 (OJ L256, 13.9.1991, p 51) art 2(2) (Directive not to apply in relation to armed forces, police, public authorities, collectors, etc).

13 See note 10.

14 'le specified in the Export Control Order 2008, SI 2008/3231, Sch 4 Pt 1, 2 or 3: see PARAS 820 note 4, 822 note 14.

15 Export Control Order 2008, SI 2008/3231, art 16(2).

16 Export Control Order 2008, SI 2008/3231, art 16(3).

Halsbury's Laws of England/TRADE AND INDUSTRY (VOLUME 97 (2010) 5TH EDITION)/2. LEGISLATIVE CONTROLS/(1) GENERAL CONTROLS/(iii) Particular Controls/B. EXPORT OF GOODS/(B) Prohibitions and Controls/820. Exceptions from prohibition: transit or transhipment.

820. Exceptions from prohibition: transit or transhipment.

Nothing in the restrictions on the export of military goods and the transfer of military software or technology by electronic means¹, or the prohibitions or controls on the movement of dual-use goods², is to be taken to prohibit the exportation³ of any goods which are goods in transit provided that the following conditions are met⁴. The conditions are that:

- 9 (1) the goods in question remain on board a vessel⁵ or aircraft⁶ for the entire period that they remain in the United Kingdom or are goods on a through bill of lading or through air waybill and in any event are exported before the end of the period of 30 days beginning with the date of their importation⁷;
- 10 (2) the destination of the goods in question following exportation from the United Kingdom has been determined in the country from which they were originally exported prior to their original exportation in connection with the transaction which has given rise to transit or transhipment⁸ and has not been changed prior to their exportation from the United Kingdom, or the goods are being returned to that country⁹; and
- 11 (3) the goods in question were exported from that country in accordance with any laws or regulations relating to the exportation of goods applying there at the time of exportation of the goods¹⁰.

1 Ie the Export Control Order 2008, SI 2008/3231, art 3: see PARA 817. As to the meaning of 'software', 'technology', 'military' and 'transfer by electronic means' see PARA 817 notes 4, 5, 9, 10 respectively.

2 Ie the Export Control Order 2008, SI 2008/3231, arts 4, 7 and 8(1): see PARA 817. As to the meaning of 'dual-use' see PARA 817 note 3.

3 As to the meaning of 'exportation' see PARA 817 note 8.

4 Export Control Order 2008, SI 2008/3231, art 17(1) (amended by SI 2010/121). The exemption does not apply to: (1) anti-personnel landmines and components specially designed for them; (2) category A goods; (3) equipment, software or technology falling within entry ML18, ML21 or ML22 in the Export Control Order 2008, SI 2008/3231, Sch 2, specifically related to anti-personnel landmines or Category A goods; (4) goods being exported to a destination specified in Sch 4 Pt 1; (5) military goods being exported to any country or destination specified in Sch 4 Pt 2 or Pt 3; (6) category B goods being exported to any country or destination specified in Sch 4 Pt 4: art 17(2). Nor does the exception apply to the extent that: (a) the exporter (or, if the exporter is not within the United Kingdom, any agent of the exporter within the United Kingdom concerned in the exportation or intended exportation) has been informed by a competent authority that the goods are or may be intended, in their entirety or in part, for WMD purposes; (b) the exporter is aware that the goods are intended, in their entirety or in part, for WMD purposes; or (c) the exporter has grounds for suspecting that the goods are or may be intended, in their entirety or in part, for WMD purposes, unless the exporter has made all reasonable inquiries as to their proposed use and is satisfied that they will not be so used: art 17(3).

As to the countries specified in Sch 4 Pts 1, 2 see PARA 822 note 14. The countries specified in Sch 4 Pt 3 are Afghanistan, Argentina, Burundi, China (People's Republic other than the Special Administrative Regions), Iraq, Liberia, Macao Special Administrative Region, Rwanda, Sierra Leone, Somalia, Tanzania, Uganda; and the countries specified in Sch 4 Pt 4 (amended by SI 2009/1305) are Albania, Angola, Belarus, Benin, Bosnia/Herzegovina, Burkina Faso, Cameroon, Cape Verde, Central African Republic, Chad, Colombia, Congo (Brazzaville), Dubai, East Timor (Timor-Leste), Eritrea, Ethiopia, Gambia, Georgia, Ghana, Guinea, Guinea Bissau, Haiti, Hong Kong Special Administrative Region, Jamaica, Kenya, Kyrgyzstan, Libya, Mali, Mauritania, Moldova, Montenegro, Morocco, Namibia, Nepal, Niger, Nigeria, Oman, Pakistan, Russia, Senegal, Serbia, Sri Lanka, Syria, Taiwan, Tajikistan, Togo, Trinidad & Tobago, Turkmenistan, Ukraine, Venezuela, Yemen.

As to the meaning of 'category A goods' and 'category B goods' see PARA 822 notes 17, 20 respectively. As to the meaning of 'United Kingdom' see PARA 806 note 7. As to the meanings of 'competent authority' and 'WMD purposes' see PARA 817 notes 31, 18 respectively.

- 5 As to the meaning of 'vessel' see PARA 817 note 8.
- 6 As to the meaning of 'aircraft' see PARA 817 note 8.
- 7 Export Control Order 2008, SI 2008/3231, art 17(4)(a).
- 8 As to the meaning of 'transit or transhipment' see PARA 818 note 5.
- 9 Export Control Order 2008, SI 2008/3231, art 17(4)(b).
- 10 Export Control Order 2008, SI 2008/3231, art 17(4)(c).

UPDATE

820 Exceptions from prohibition: transit or transhipment

NOTE 4--'Uzbekistan' added to list in SI 2008/3231 Sch 4 Pt 4 (amended by SI 2010/615).

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821. Exceptions from prohibition: software and technology.

Nothing in the restrictions on the export of military goods and the transfer of military software or technology by electronic means¹ or the prohibitions on the movement of UK-controlled dual-use goods² is to be taken to prohibit the transfer of technology: (1) that is in the public domain³; (2) that is the minimum technology required for: (a) the installation, operation, maintenance or repair of goods or software that are not military goods or software or UK controlled dual-use goods or software; or (b) a patent application; or (3) in the course of basic scientific research⁴.

Nothing in the restrictions on transfer of software or technology for WMD purposes⁵ is to be taken to prohibit the transfer of software or technology in the public domain⁶.

1 In the Export Control Order 2008, SI 2008/3231, art 3: see PARA 817. As to the meaning of 'software', 'technology', 'military' and 'transfer by electronic means' see PARA 817 notes 4, 5, 9, 10 respectively.

2 In the Export Control Order 2008, SI 2008/3231, art 4: see PARA 817. As to the meanings of 'dual-use' and 'UK-controlled' see PARA 817 notes 3, 12 respectively.

3 'In the public domain' means available without restriction upon further dissemination (no account being taken of restrictions arising solely from copyright): Export Control Order 2008, SI 2008/3231, art 2(1).

4 Export Control Order 2008, SI 2008/3231, art 18(1) (amended by SI 2010/121). For these purposes, 'basic scientific research' means experimental or theoretical work undertaken principally to acquire new knowledge of the fundamental principles of phenomena or observable facts and not primarily directed towards a specific practical aim or objective: Export Control Order 2008, SI 2008/3231, art 18(3).

5 In the Export Control Order 2008, SI 2008/3231, arts 10-12: see PARA 817. As to the meaning of 'WMD purposes' see PARA 817 note 18.

6 Export Control Order 2008, SI 2008/3231, art 18(2).

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LEGISLATIVE CONTROLS/(1) GENERAL CONTROLS/(iii) Particular Controls/B. EXPORT OF
GOODS/(B) Prohibitions and Controls/822. Technical assistance controls and trade controls.

822. Technical assistance controls and trade controls.

The Secretary of State¹ has also imposed prohibitions relating to the provision of technical assistance in relation to chemical, biological or nuclear weapons programmes² and controls relating to the movement of goods between countries other than the United Kingdom and the Isle of Man³.

Subject to the obtaining of a licence⁴, (1) no person may directly or indirectly provide to a person or place outside the customs territory⁵ any technical assistance⁶ related to the supply, delivery, manufacture, maintenance or use of anything which that person has been informed by the Secretary of State is or may be intended, in its entirety or in part, for WMD purposes⁷ or which that person is aware is intended, in its entirety or in part, for WMD purposes⁸; (2) no United Kingdom person may directly or indirectly provide from a place outside the customs territory to any person or place outside the customs territory any technical assistance related to the supply, delivery, manufacture, maintenance or use of anything which that person has been informed by the Secretary of State is or may be intended, in its entirety or in part, for WMD purposes or which that person is aware is intended, in its entirety or in part, for WMD purposes⁹.

Subject to the obtaining of a licence and to the exception for activities carried out in the Isle of Man¹⁰, no person carrying out activities in the United Kingdom and no United Kingdom person¹¹ may directly or indirectly: (a) supply or deliver; (b) agree to supply or deliver; or (c) do any act calculated to promote the supply or delivery of, any goods subject to trade controls¹² from one third country¹³ to another third country that is an embargoed destination¹⁴.

Subject to the obtaining of a licence and to the exceptions for the movement of goods within the customs territory¹⁵ and for activities carried out in the Isle of Man, no person carrying out activities in the United Kingdom and no United Kingdom person¹⁶ may directly or indirectly: (i) supply or deliver; (ii) agree to supply or deliver; or (iii) do any act calculated to promote the supply or delivery of, any category A goods¹⁷, where that person knows or has reason to believe that such action or actions will, or may, result in the removal of those goods from one third country to another third country¹⁸.

Subject to the obtaining of a licence and to the exception for activities carried out in the Isle of Man, no person carrying out activities in the United Kingdom and no United Kingdom person¹⁹ may directly or indirectly: (A) supply or deliver; (B) agree to supply or deliver; or (C) do any act calculated to promote the supply or delivery of, any category B goods²⁰, where that person knows or has reason to believe that such action or actions will, or may, result in the removal of those goods from one third country to another third country²¹. However, nothing in these provisions is to be taken to prohibit the provision of financing or financial services, insurance or reinsurance services or general advertising or promotion services by a person whose only involvement in the activities described above is to provide or agree to provide such services²². A person (the 'transporter') whose only involvement in such activities is to provide or agree to provide transportation services in relation to category B goods (the 'relevant goods') only contravenes the prohibition if either of the following applies²³, that is if the transporter arranges the removal of the relevant goods from one third country to another third country²⁴ or if the transporter, otherwise than in the course of providing services to another person, to whom the prohibition applies, and who has agreed to provide transportation services in relation to the relevant goods, removes or agrees to remove the relevant goods from one third country to

another third country²⁵. Nothing in the above provisions is to be taken to prohibit any contract promotion activity²⁶ that is carried out otherwise than for payment²⁷.

Subject to the obtaining of a licence and to the exceptions for the movement of goods within the customs territory and for activities carried out in the Isle of Man, no person may directly or indirectly agree to supply or deliver or do any act calculated to promote the supply or delivery of, any category C goods²⁸, where that person knows or has reason to believe that such action or actions will, or may, result in the removal of those goods from one third country to another third country²⁹. However, this is not to be taken to prohibit the provision of transportation services, financing or financial services, insurance or reinsurance services or general advertising or promotion services, by a person whose only involvement in the activities described above is to provide or agree to provide such services³⁰, or to prohibit any contract promotion activity that is carried out otherwise than for payment³¹.

Nothing in the restrictions on trade in category A or category C goods³² is to be taken to prohibit activities related to the movement of specified goods³³ within the customs territory³⁴.

Nothing in the provisions set out above is to be taken to prohibit activities carried out in the Isle of Man³⁵.

1 As to the Secretary of State see PARA 802.

2 See the Export Control Order 2008, SI 2008/3231, Pt 3 (art 19).

3 See the Export Control Order 2008, SI 2008/3231, Pt 4 (arts 20-25). As to the meaning of 'United Kingdom' see PARA 806 note 7.

4 See PARA 823.

5 As to the meaning of 'customs territory' see PARA 817 note 20.

6 'Technical assistance' means any technical support related to repairs, development, manufacture, assembly, testing, use, maintenance or any other technical service: Export Control Order 2008, SI 2008/3231, art 2(1). For the purposes of art 19(1), (2), directly providing technical assistance includes providing technical assistance or agreeing to do so and indirectly providing technical assistance includes making arrangements under which another person provides technical assistance or agrees to do so: art 19(3).

7 As to the meaning of 'WMD purposes' see PARA 817 note 18.

8 Export Control Order 2008, SI 2008/3231, art 19(1).

9 Export Control Order 2008, SI 2008/3231, art 19(2).

10 Ie the Export Control Order 2008, SI 2008/3231, art 25: see text to note 35.

11 See the Export Control Order 2008, SI 2008/3231, art 20(1).

12 'Goods subject to trade controls' means goods that are category A goods, category B goods or category C goods (see notes 17, 20, 28 respectively): Export Control Order 2008, SI 2008/3231, art 2(1).

13 'Third country' means any country that is not the United Kingdom or the Isle of Man except that, for the purposes of the Export Control Order 2008, SI 2008/3231, Pt 4, goods that are goods in transit are considered to be located in a third country: art 2(1). 'In transit' means imported into the United Kingdom for transit or transhipment: art 2(1). As to the meaning of 'transit or transhipment' see PARA 818 note 5.

14 Export Control Order 2008, SI 2008/3231, art 20(2). 'Embargoed destination' means a country listed in Sch 4 Pt 1 (Embargoed and No Exception for Transit) or Pt 2 (Embargoed and Subject to Transit Control for Military Goods): art 2(1). The countries so listed are the Democratic People's Republic of Korea and Iran (Sch 4 Pt 1); and Armenia, Azerbaijan, Burma (Myanmar), Democratic Republic of the Congo, Ivory Coast (Côte d'Ivoire), Lebanon, Sudan, Uzbekistan, Zimbabwe (Sch 4 Pt 2).

15 Ie the Export Control Order 2008, SI 2008/3231, art 24: see text and notes 32-34.

16 See the Export Control Order 2008, SI 2008/3231, art 21(1).

17 'Category A goods' means goods specified in the Export Control Order 2008, SI 2008/3231, Sch 1 Pt 1: art 2(1). Such goods are:

- 7 (1) certain security and para-military police equipment, ie: (a) goods designed for the execution of human beings, as follows: (i) gallows and guillotines; (ii) electric chairs; (iii) air-tight vaults made of eg steel and glass, designed for the purpose of execution of human beings by the administration of lethal gas or substance; (iv) automatic drug injection systems designed for the purpose of execution of human beings by the administration of a lethal chemical substance (Sch 1 Pt 1 para 1); (b) restraints specially designed for restraining human beings, as follows: (i) leg-irons, gangchains, shackles and individual cuffs or shackle bracelets except those that are 'ordinary handcuffs'; (ii) restraint chairs unless designed for disabled persons; (iii) shackle boards; (iv) thumb-cuffs and thumb-screws, including serrated thumb-cuffs; (v) electric shock belts (Sch 1 Pt 1 para 2); (c) portable devices designed or modified for the purpose of riot control or self-protection by the administration of an electric shock (eg electric-shock batons, electric-shock shields, stun-guns and electric-shock dart-guns) (Sch 1 Pt 1 para 3); (d) components specially designed or modified for the devices in head (c) (Sch 1 Pt 1 para 4); (e) hand-held, spiked batons (Sch 1 Pt 1 para 5);
- 8 (2) cluster munitions, explosive submunitions and explosive bomblets, as follows: (a) cluster munitions other than those munitions described in head (e) (Sch 1 Pt 1 para 6); (b) explosive submunitions other than those submunitions described in head (e) (Sch 1 Pt 1 para 7); (c) explosive bomblets (Sch 1 Pt 1 para 8); (d) components specially designed for cluster munitions, explosive submunitions or explosive bomblets (Sch 1 Pt 1 para 9); but (e) heads (a), (b) do not include the following conventional munitions: (i) a munition or submunition designed to dispense flares, smoke, pyrotechnics or chaff; or a munition designed exclusively for an air defence role; (ii) a munition or submunition designed to produce electrical or electronic effects; (iii) a munition that has all of the following characteristics: (A) each munition contains fewer than ten explosive submunitions; (B) each explosive submunition weighs more than 4 kilograms; (C) each explosive submunition is designed to detect and engage a single target object; (D) each explosive submunition is equipped with an electronic self-destruction mechanism; (E) each explosive submunition is equipped with an electronic self-deactivating feature (Sch 1 Pt 1 para 10).

'Cluster munitions' means conventional munitions designed to disperse or release explosive submunitions; 'explosive bomblets' means conventional munitions, weighing less than 20 kilograms each, which are not self propelled and which, in order to perform their task, are specially designed to be dispersed or released by a dispenser affixed to an aircraft, and are designed to function by detonating an explosive charge prior to, on or after impact; 'explosive submunitions' means conventional munitions, weighing less than 20 kilograms each, which in order to perform their task are dispersed or released by another conventional munition and are designed to function by detonating an explosive charge prior to, on or after impact; 'ordinary handcuffs' means handcuffs which have an overall dimension including chain, measured from the outer edge of one cuff to the outer edge of the other cuff, between 150 and 240 mm when locked and have not been modified to cause physical pain or suffering; 'a self-deactivating feature' is one which automatically renders a munition inoperable by means of the irreversible exhaustion of a component (eg a battery) that is essential to the operation of the munition; 'a self-destruction mechanism' is an incorporated, automatically-functioning mechanism which is in addition to the primary initiating mechanism of a munition and which secures the destruction of the munition into which it is incorporated: Sch 1 definitions.

18 Export Control Order 2008, SI 2008/3231, art 21(2).

19 See the Export Control Order 2008, SI 2008/3231, art 22(1).

20 'Category B goods' means goods specified in the Export Control Order 2008, SI 2008/3231, Sch 1 Pt 2: art 2(1). Such goods are:

- 9 (1) small arms and light weapons within ML1 and ML2, ie goods specified in entry ML1.a., ML1.b., ML1.c. or ML2.a. in Sch 2 that are designed to be carried, operated and fired by an individual or by three or fewer individuals acting together, other than mortars with a calibre of 100 mm or more (Sch 1 Pt 2 para 11 (substituted by SI 2009/1305));
- 10 (2) accessories and ammunition for small arms and light weapons within ML1 and ML2, ie the following goods: (a) accessories specified in entry ML1.d or ML2.c. in the Export Control Order 2008, SI 2008/3231, Sch 2 that are capable of being used in connection with weapons falling within head (1); (b) weapon sights specified in entry ML5.a. in Sch 2 that are designed for use with weapons falling within head (1); and (c) ammunition that is capable of being fired or launched by weapons falling within head (1) (Sch 1 Pt 2 para 12 (amended by SI 2009/1305));
- 11 (3) light weapons within ML4, ie equipment specified in entry ML4.b in the Export Control Order 2008, SI 2008/3231, Sch 2 that is: (a) specially designed for firing or launching rockets,

- grenades, missiles or other explosive devices; and (b) designed to be carried, operated and fired by an individual or by three or fewer individuals acting together (Sch 1 Pt 2 para 13);
- 12 (4) ammunition for light weapons within ML4, ie rockets, grenades, missiles and other explosive devices that are: (a) specified in entry ML4 in Sch 2; and (b) capable of being fired or launched from equipment falling within head (3) (Sch 1 Pt 2 para 14);
- 13 (5) hand grenades, ie grenades specified in entry ML4 in Sch 2 that are designed to be thrown (Sch 1 Pt 2 para 15);
- 14 (6) MANPADS, missiles for them, associated equipment and their specially designed components, ie to the extent they do not fall within head (3) or (4), the following goods: (a) man-portable air defence systems (MANPADS), as follows: (i) surface-to-air missile systems designed to be man-portable and operated and fired by a single individual; (ii) surface-to-air missile systems designed to be operated and fired by more than one individual acting as a crew and portable by several individuals; (b) missiles for MANPADS; (c) production equipment specially designed for MANPADS; (d) field test equipment specially designed for MANPADS; (e) specialised training equipment and simulators for MANPADS (Sch 1 Pt 2 para 16);
- 15 (7) long-range missiles, ie missiles capable of a range of 300 km or more that fall within Sch 2 (Sch 1 Pt 2 para 17);
- 16 (8) components specially designed for goods falling within any of heads (1) to (7) (Sch 1 Pt 2 para 18).

'Production' has the same meaning as in Sch 2 (ie all production stages, eg product engineering, manufacture, integration, assembly (mounting), inspection, testing, quality assurance: Sch 2 definitions): Sch 1 definitions. As to Sch 2 see PARA 817 note 9.

- 21 Export Control Order 2008, SI 2008/3231, art 22(2).
- 22 Export Control Order 2008, SI 2008/3231, art 22(3).
- 23 Export Control Order 2008, SI 2008/3231, art 22(4).
- 24 Export Control Order 2008, SI 2008/3231, art 22(5).
- 25 Export Control Order 2008, SI 2008/3231, art 22(6).

26 'Contract promotion activity' means any act calculated to promote the arrangement or negotiation of a contract for the acquisition, disposal or movement of goods or any agreement to do such an act: Export Control Order 2008, SI 2008/3231, art 2(1).

27 Export Control Order 2008, SI 2008/3231, art 22(7). 'Payment' includes a payment in money or money's worth or in kind whether referable to a particular act or made from time to time but does not include a payment made by way of wages or salary: art 2(1).

28 'Category C goods' means: (1) military goods other than goods specified in the Export Control Order 2008, SI 2008/3231, Sch 1; (2) portable devices for the purpose of riot control or self-protection by the administration or dissemination of an incapacitating chemical substance; (3) pelargonic acid vanillylamide (PAVA) (CAS 2444-46-4); (4) oleoresin capsicum (OC) (CAS 8023-77-6): art 2(1).

- 29 Export Control Order 2008, SI 2008/3231, art 23(1).
- 30 Export Control Order 2008, SI 2008/3231, art 23(2).
- 31 Export Control Order 2008, SI 2008/3231, art 23(3).
- 32 ie nothing in the Export Control Order 2008, SI 2008/3231, art 21 or art 23.

33 ie: (1) the goods listed in the Export Control Order 2008, SI 2008/3231, Sch 1 para 1 (see note 17 head (1)(a)); (2) individual cuffs; (3) shackles except those shackles which have an overall dimension including chain, when measured from the outer edge of one cuff to the outer edge of the other cuff, of between 240 mm and 280 mm when locked and have not been modified to cause physical pain or suffering; (4) the goods listed in Sch 1 paras 2(b), (c) and (d) and 4 (see note 17 heads (1)(b)(ii)-(iv), (d)); (5) portable devices for the purpose of riot control or self-protection by the administration or dissemination of an incapacitating chemical substance; (6) pelargonic acid vanillylamide (PAVA) (CAS 2444-46-4); (7) oleoresin capsicum (OC) (CAS 8023-77-6): art 24(a)-(g).

34 Export Control Order 2008, SI 2008/3231, art 24.

35 Export Control Order 2008, SI 2008/3231, art 25.

UPDATE

822 Technical assistance controls and trade controls

NOTE 14--'Uzbekistan' omitted: SI 2008/3231 Sch 4 Pt 2 (amended by SI 2010/615).

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LEGISLATIVE CONTROLS/(1) GENERAL CONTROLS/(iii) Particular Controls/B. EXPORT OF
GOODS/(B) Prohibitions and Controls/823. Export licences.

823. Export licences.

Nothing in the export or transfer controls, the technical assistance controls or the trade controls under the Export Control Order 2008¹ prohibits an activity that is carried out under the authority of a UK licence². Unless it provides otherwise, a UK licence to export³ military⁴ goods also authorises the export or transfer⁵ of the minimum technology⁶ required for the installation, operation, maintenance and repair of the goods to the same destination as the goods⁷. A UK licence to supply or deliver goods subject to trade controls also authorises agreeing to supply or deliver, or doing any act calculated to promote the supply or delivery of, the goods⁸.

For the purposes of the rules about authorisations in the dual-use Regulation⁹, the Secretary of State is empowered to grant authorisations¹⁰. The authorisation required by that Regulation¹¹ for exportation or transfer of goods, software¹² or technology from the United Kingdom¹³ is a licence granted by the Secretary of State¹⁴.

A licence granted by the Secretary of State may be: (1) either general or granted to a particular person (except that a licence granted under the torture Regulation¹⁵ may not be a general licence¹⁶); (2) limited so as to expire on a specified date unless renewed; (3) subject to, or without, conditions and any such condition may require any act or omission before or after the doing of the act authorised by the licence¹⁷.

The exportation of goods to any destination outside the customs territory¹⁸ is to be regarded as being under the authority of a UK licence to, or for the benefit of, a particular person (the 'licence holder') only if: (a) the licence holder is the person on whose behalf the exportation declaration is made; and (b) the licence holder is established within the customs territory and either the licence holder is the owner of the goods or has a similar right of disposal over them or, if no person who is the owner of the goods or has a similar right of disposal over them is established within the customs territory, the licence holder is a party to one or more contracts under which the ownership of the goods or a similar right of disposal over them has passed to a person not established within the customs territory and pursuant to which the goods are to be, are being or have been exported from the customs territory¹⁹. This does not apply, however, if no person falls within head (b) above or if the exportation is of goods imported into the United Kingdom for transit or transhipment²⁰.

Not later than 30 days after²¹: (i) any person first does any act under the authority of a general licence granted by the Secretary of State that does not provide otherwise; (ii) any person established in the United Kingdom first does any act under the authority of the EU General Export Authorisation²², the person in question must give to the Secretary of State written notice²³ of their name and the address at which copies of specified records²⁴ may be inspected²⁵ by any person authorised by the Secretary of State or the Commissioners for Revenue and Customs²⁶. A person who has given to the Secretary of State written notice of particulars must, not later than 30 days after any change in those particulars, give to the Secretary of State notice of the changed particulars²⁷.

The Secretary of State may by notice amend, suspend or revoke a licence granted by the Secretary of State, or suspend or revoke a general licence granted by the Secretary of State as it applies to a particular licence user²⁸. Such a notice, or a notice of suspension or revocation of authorisation under the dual-use Regulation²⁹ or the torture Regulation³⁰, is not to take effect until: (A) in the case of a notice affecting all users of a general licence, it has been published in a manner appearing to the Secretary of State to be suitable for securing that the notice is seen

by persons likely to be affected by it; (B) in any other case, it has been served on the holder of the licence or on the licence user affected³¹.

In the event that the Secretary of State decides not to grant a licence to any person who has applied for one, the applicant must be provided with a written notification setting out the reason or reasons for the decision³². In the event that the Secretary of State decides to suspend a licence other than a general licence, or to suspend a general licence as it applies to a particular licence user, the licence holder or licence user must be provided with a written notification setting out the terms of the suspension and the reason or reasons for the decision³³. In the event that the Secretary of State decides to revoke a licence other than a general licence, or to revoke a general licence as it applies to a particular licence user, the licence holder or licence user must be provided with a written notification setting out the reason or reasons for the decision³⁴. In the event that the Secretary of State decides to amend a licence other than a general licence, and does not do so at the request of the licence holder, the licence holder must be provided with a written notification setting out the reason or reasons for the decision³⁵. Any person who has a right under any of the above provisions to a written notification in respect of a decision made by the Secretary of State has 28 days beginning with the date of the written notification in which to submit an appeal against the decision in writing to the Secretary of State, Export Control Organisation, Department for Business, Innovation and Skills³⁶. Any appeal so submitted must specify the grounds on which that appeal is made and may provide further information or arguments in support of the appeal³⁷. Pending determination of any such appeal, any decision taken by the Secretary of State continues to have effect³⁸.

1 Ie the Export Control Order 2008, SI 2008/3231, Pt 2 (arts 3-18), Pt 3 (art 19) or Pt 4 (arts 21-25). See PARAS 817, 822.

2 Export Control Order 2008, SI 2008/3231, art 26(1). 'UK licence' means a licence in writing granted by the Secretary of State that authorises an act or acts that would otherwise be prohibited by the 2008 Order: art 2(1). As to the Secretary of State see PARA 802.

3 As to the meaning of 'export' see PARA 817 note 8.

4 As to the meaning of 'military' see PARA 817 notes 9.

5 As to the meaning of 'transfer' see PARA 817 note 39.

6 As to the meaning of 'technology' see PARA 817 note 5.

7 Export Control Order 2008, SI 2008/3231, art 26(2).

8 Export Control Order 2008, SI 2008/3231, art 26(3).

9 Ie EC Council Regulation 1334/2000 (OJ L159, 30.6.2000, p 1) art 6. As to the meaning of 'dual-use' see PARA 817 note 3.

10 Export Control Order 2008, SI 2008/3231, art 26(4).

11 Ie by EC Council Regulation 1334/2000 (OJ L159, 30.6.2000, p 1) art 21(1).

12 As to the meaning of 'software' see PARA 817 note 4.

13 As to the meaning of 'United Kingdom' see PARA 806 note 7.

14 Export Control Order 2008, SI 2008/3231, art 26(5).

15 Ie EC Council Regulation 1236/2005 (OJ L200, 30.7.2005, p 1).

16 'General' in relation to a licence, means not granted to a particular person but available for use generally: Export Control Order 2008, SI 2008/3231, art 2(1).

17 Export Control Order 2008, SI 2008/3231, art 26(6).

- 18 As to the meaning of 'customs territory' see PARA 817 note 20.
- 19 Export Control Order 2008, SI 2008/3231, art 27(1).
- 20 Export Control Order 2008, SI 2008/3231, art 27(2). As to the meaning of 'transit or transhipment' see PARA 818 note 5.
- 21 Any reference in the Export Control Order 2008, SI 2008/3231, to time after an event is a reference to a period of that length of time beginning on the day of that event: art 2(3).
- 22 'The EU General Export Authorisation' means the authorisation constituted by EC Council Regulation 1334/2000 (OJ L159, 30.6.2000, p 1) art 6(1), Annex II: Export Control Order 2008, SI 2008/3231, art 2(1); European Union (Amendment) Act 2008 s 3(6).
- 23 Any notice to be given to the Secretary of State by a person under the Export Control Order 2008, SI 2008/3231, may be given by an agent of that person; and must be sent by post or delivered to the Secretary of State at the Export Control Organisation, Department for Business, Innovation and Skills: art 44 (amended by SI 2009/2748).
- 24 Ie the records referred to in the Export Control Order 2008, SI 2008/3231, art 29(1) or 30(3) (see PARA 824 text to notes 5, 21) or in EC Council Regulation 1334/2000 (OJ L159, 30.6.2000, p 1) art 16(1) (record-keeping).
- 25 Ie under the Export Control Order 2008, SI 2008/3231, art 31: see PARA 824 text and notes 22-29.
- 26 Export Control Order 2008, SI 2008/3231, art 28(1). As to the Commissioners for Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 900 et seq.
- 27 Export Control Order 2008, SI 2008/3231, art 28(2).
- 28 Export Control Order 2008, SI 2008/3231, art 32(1). 'Licence user' means a person who is registered under art 28 to use a general licence or who is entitled to use a general licence without registration owing to the terms of that general licence: art 2(1).
- 29 Ie a notice under EC Council Regulation 1334/2000 (OJ L159, 30.6.2000, p 1) art 9(2) (suspension, revocation, etc of authorisations).
- 30 Ie a notice under EC Council Regulation 1236/2005 (OJ L200, 30.7.2005, p 1) art 9(4) (suspension, revocation, etc of authorisations).
- 31 Export Control Order 2008, SI 2008/3231, art 32(2).
- 32 Export Control Order 2008, SI 2008/3231, art 33(1).
- 33 Export Control Order 2008, SI 2008/3231, art 33(2).
- 34 Export Control Order 2008, SI 2008/3231, art 33(3).
- 35 Export Control Order 2008, SI 2008/3231, art 33(4).
- 36 Export Control Order 2008, SI 2008/3231, art 33(5) (amended by SI 2009/2748).
- 37 Export Control Order 2008, SI 2008/3231, art 33(6).
- 38 Export Control Order 2008, SI 2008/3231, art 33(7).

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824. Record keeping.

A person who acts under the authority of a general licence¹ granted by the Secretary of State² or acts under the authority of the EU General Export Authorisation³ whilst established in the United Kingdom⁴, must keep detailed registers or records⁵. The registers or records must contain sufficient detail as may be necessary to allow specified information, where appropriate, to be identified in relation to each act carried out under the authority of the licence or authorisation⁶. The registers or records must be kept:

- 12 (1) in the case of a general licence authorising an activity that would otherwise be prohibited by trade controls⁷, for at least four years from the end of the calendar year in which the authorised act took place;
- 13 (2) in any other case, for at least three years from the end of the calendar year in which the authorised act took place,

or for such longer period as may be specified in the licence or authorisation⁸.

Not later than 30 days after⁹ the first exportation¹⁰ or transfer¹¹ of particular information security items¹² from the United Kingdom under the authority of the EU General Export Authorisation by any person, that person must (in addition to any particulars already given to the Secretary of State¹³) give to the Secretary of State in relation to those goods or that software or technology written notice¹⁴ of such of the required information¹⁵ as is in their possession and such other of that information as they can reasonably be expected to obtain within that time¹⁶. A person who has given to the Secretary of State such written notice of information must, not later than 30 days after any change in that information, give to the Secretary of State written notice of the changed information¹⁷. A person who exports or transfers information security items not specified in Annex IV to the dual-use Regulation¹⁸ to a destination within the customs territory¹⁹ must maintain registers or records in relation to each such exportation or transfer that contain such of the required information²⁰ as they can reasonably be expected to obtain and such other of that information as comes into their possession²¹.

A person (a 'relevant person') who is required²² to keep registers, records or documents ('compulsory records') must permit those compulsory records to be inspected and copied by a person authorised by the Secretary of State or the Commissioners for Revenue and Customs²³. A person authorised by the Secretary of State or the Commissioners who produces, if required to do so, a duly authenticated document showing their authority, has the right at any reasonable hour to enter for this purpose: (a) in the case of compulsory records required to be kept under the Export Control Order 2008²⁴, the premises the address of which has been most recently notified to the Secretary of State²⁵ in relation to the records; or (b) in the case of compulsory records required to be kept under the dual-use Regulation²⁶, the premises the address of which has been most recently notified to the Secretary of State²⁷ in relation to the records or, if none, such other premises the address of which has been notified for this purpose²⁸. Where a relevant person keeps compulsory records in a form which is not legible, the relevant person must at the request of a person authorised by the Secretary of State or the Commissioners reproduce the relevant records in a legible form²⁹.

1 As to the meaning of 'general licence' see PARA 823 note 16. As to licences generally see PARA 823.

- 2 As to the Secretary of State see PARA 802.
- 3 As to the meaning of 'EU General Export Authorisation' see PARA 823 note 22.
- 4 As to the meaning of 'United Kingdom' see PARA 806 note 7.
- 5 Export Control Order 2008, SI 2008/3231, art 29(1).
- 6 Export Control Order 2008, SI 2008/3231, art 29(2). The information to be identified is: (1) a description of the act; (2) a description of the goods, software or technology to which the act relates; (3) the date of the act or the dates between which the act took place; (4) the quantity of the goods (if any) to which the act relates; (5) the name and address of the person referred to in art 29(1); (6) the name and address of any consignee of the goods to which the act relates or any recipient of the software or technology to which the act relates; (7) in so far as it is known to the person referred to in art 29(1), the name and address of the end-user of the goods, software or technology to which the act relates; (8) if different from the person referred to in art 29(1), the name and address of the supplier of the goods (if any) to which the act relates; (9) any further information required by the licence or authorisation referred to in art 29(1): art 29(2)(a)-(i). The documents and records to be kept in accordance with EC Council Regulation 1334/2000 (OJ L159, 30.6.2000, p 1) art 21(5) (records of exportation and transfer of listed items within the customs territory) are the registers or records referred to in the Export Control Order 2008, SI 2008/3231, art 29(2)(a)-(i): art 29(4). As to the meaning of 'software' and 'technology' see PARA 817 notes 4, 5 respectively.
- 7 Ie by the Export Control Order 2008, SI 2008/3231, Pt 4 (arts 21-25); see PARA 822.
- 8 Export Control Order 2008, SI 2008/3231, art 29(3).
- 9 As to reference to time after an event see PARA 823 note 21.
- 10 As to the meaning of 'exportation' see PARA 817 note 8.
- 11 As to the meaning of 'transfer' see PARA 817 note 39.
- 12 Ie information security systems not specified in the Export Control Order 2008, SI 2008/3231, Sch 5. 'Information security items' means goods, software and technology specified in EC Council Regulation 1334/2000 (OJ L159, 30.6.2000, p 1) Annex I Pt 2 Category 5: Export Control Order 2008, SI 2008/3231, art 2(1). The information security items specified in Sch 5 are the following software and technology but only to the extent that such software or technology is for an intra-group or collaborative end-use: (1) cryptography development software specified in EC Council Regulation 1334/2000 (OJ L159, 30.6.2000, p 1) Annex I entry 5D002, other than software having the characteristics, or performing or simulating the functions, of equipment designed or modified to perform cryptanalytic functions; (2) cryptography development technology specified in Annex I entry 5E002, other than technology for the development, production or use of: (a) equipment designed or modified to perform cryptanalytic functions; or (b) software having the characteristics, or performing or simulating the functions, of equipment designed or modified to perform cryptanalytic functions: Export Control Order 2008, SI 2008/3231, Sch 5 para 2. 'Development' has the same meaning as in Sch 2 (ie all stages prior to production eg design, design research, design analyses, design concepts, assembly and testing of prototypes, pilot production schemes, design data, process of transforming design data into goods or software, configuration design, integration design, layouts: Sch 2 definitions): Sch 5 para 1. As to Sch 2 see PARA 817 note 9. 'Intra-group or collaborative end-use' means: (i) use by the exporter, or a subsidiary undertaking or parent undertaking of the exporter, in that person's own commercial cryptographic goods; or (ii) use by a business or academic collaborator of the exporter in that person's own commercial cryptographic goods in accordance with the terms of a collaboration agreement with the exporter: Sch 5 para 1. 'Parent undertaking' and 'subsidiary undertaking' have the same meanings as in the Companies Act 2006 (see s 1162, Sch 7; and COMPANIES vol 14 (2009) PARA 26); 'collaboration agreement' means an agreement for the carrying out of work comprising or related to research into the development of cryptography or cryptographic goods or software; and 'business or academic collaborator', in relation to an exporter, means a person who is either: (A) working by way of business in research and development of cryptography or cryptographic goods or software; or (B) teaching, or undertaking research as a member of or at a university or institution of higher education into, cryptography or cryptographic goods or software, and with whom the exporter has previously entered into a collaboration agreement: Export Control Order 2008, SI 2008/3231, Sch 5 para 1. 'Production', 'technology' and 'use' have the same meanings as in Sch 2: Sch 5 para 1. As to the meaning of 'production' so defined see PARA 822 note 20. 'Technology' means specific information necessary for the development, production or use of goods or software; and 'use' means operation, installation (eg on-site installation), maintenance, checking, repair, overhaul and refurbishing: Sch 2 definitions.
- 13 Ie under the Export Control Order 2008, SI 2008/3231, art 28(1): see PARA 823 text and notes 21-26.
- 14 As to the giving of notice to the Secretary of State see PARA 823 note 23.

15 le the information specified in the Export Control Order 2008, SI 2008/3231, Sch 5. The information so specified is: (1) a general description of the goods, software or technology, such as might be contained in a product brochure; (2) descriptions of all relevant encryption algorithms and key management schemes, and descriptions of how they are used by the goods, software or technology (eg which algorithm is used for authentication, which for confidentiality and which for key exchange); and details (eg source code) of how they are implemented (eg how keys are generated and distributed, how key length is governed and how the algorithm and keys are called by the software); (3) details of any measures taken to preclude user modification of the encryption algorithm, key management scheme or key length; (4) details of pre- or post-processing of data, such as compression of plain text or packetisation of encrypted data; (5) details of programming interfaces that can be used to gain access to the cryptographic functionality of the goods, software or technology; and (6) a list of any protocols to which the goods, software or technology adhere: Sch 5 para 3.

16 Export Control Order 2008, SI 2008/3231, art 30(1).

17 Export Control Order 2008, SI 2008/3231, art 30(2).

18 le not specified in EC Council Regulation 1334/2000 (OJ L159, 30.6.2000, p 1) Annex IV.

19 As to the meaning of 'customs territory' see PARA 817 note 20.

20 See note 15.

21 Export Control Order 2008, SI 2008/3231, art 30(3). The registers or records referred to in art 30(3) must be kept for at least three years from the end of the calendar year in which the exportation or transfer took place: art 30(4).

22 le under the Export Control Order 2008, SI 2008/3231, art 29 or 30 or under EC Council Regulation 1334/2000 (OJ L159, 30.6.2000, p 1) art 16 (record-keeping) or 21(5) (records of exportation and transfer of listed items within the customs territory).

23 Export Control Order 2008, SI 2008/3231, art 31(1). As to the Commissioners for Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 900 et seq.

24 le under the Export Control Order 2008, SI 2008/3231, art 29 or 30.

25 le under the Export Control Order 2008, SI 2008/3231, art 28.

26 le under EC Council Regulation 1334/2000 (OJ L159, 30.6.2000, p 1) art 16 or 21(5).

27 le under the Export Control Order 2008, SI 2008/3231, art 28.

28 Export Control Order 2008, SI 2008/3231, art 31(2).

29 Export Control Order 2008, SI 2008/3231, art 31(3).

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825. Customs powers.

Where a person (the 'exporter') has exported¹ goods and required a licence² to do so, the Commissioners for Revenue and Customs may require the exporter to provide within such time as the Commissioners may determine evidence of the destination to which the goods in question were delivered³.

Goods in relation to which a licence has not been granted and which are brought to any place in the United Kingdom⁴ for the purpose of being exported may be detained by the proper⁵ officer of Her Majesty's Revenue and Customs as if they were liable to forfeiture, if and so long as that officer has reason to believe that a competent authority⁶ (after, if necessary, having had the impending exportation brought to its attention) might inform the exporter: (1) that the goods are or may be intended, in their entirety or in part, for WMD purposes⁷; or (2) as provided⁸ in the dual-use Regulation⁹.

Any dual-use goods¹⁰ in relation to which a licence has been granted which are brought to any place in the United Kingdom for the purpose of being exported to a destination outside the customs territory¹¹ may be detained by a proper officer of Her Majesty's Revenue and Customs for a period of ten working days¹² as if they were liable to forfeiture where that officer or the Secretary of State has grounds for suspicion that: (a) relevant information was not taken into account when the licence was granted; or (b) circumstances have materially changed since the issue of the licence¹³. The period may be extended to 30 working days where the Secretary of State certifies that a request for such an extension¹⁴ has been received from the member state which granted the licence¹⁵.

Where the Commissioners for Revenue and Customs investigate or propose to investigate any matter with a view to determining: (i) whether there are grounds for believing that an offence has been committed by reason of a contravention of specified provisions of the Export Control Order 2008¹⁶ or the dual-use Regulation¹⁷ or the torture Regulation¹⁸; (ii) whether a person should be prosecuted for such an offence, the matter must be treated as an assigned matter¹⁹. Specified provisions of the Customs and Excise Management Act 1979 apply with modifications²⁰.

1 As to the meaning of 'export' see PARA 817 note 8.

2 'Licence' except in the Export Control Order 2008, SI 2008/3231, art 45(2) (see PARA 817 note 6), means a UK licence or an authorisation granted under the dual-use Regulation (ie EC Council Regulation 1334/2000 (OJ L159, 30.6.2000, p 1)) or the torture Regulation (ie EC Council Regulation 1236/2005 (OJ L200, 30.7.2005, p 1)): Export Control Order 2008, SI 2008/3231, art 2(1). As to the meaning of 'UK licence' see PARA 823 note 2. As to licences generally see PARA 823.

3 Export Control Order 2008, SI 2008/3231, art 39(1), (2). As to the Commissioners for Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 900 et seq. A person who fails to comply with a requirement imposed by the Commissioners under art 39(2) commits an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale: art 39(3). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

4 As to the meaning of 'United Kingdom' see PARA 806 note 7.

5 As to the meaning of 'proper' see PARA 819 note 7.

6 As to the meaning of 'competent authority' see PARA 817 note 31.

7 As to the meaning of 'WMD purposes' see PARA 817 note 18.

8 ie in EC Council Regulation 1334/2000 (OJ L159, 30.6.2000, p 1) art 4(2) (military end-use control) or 4(3) (end-use control relating to use in items exported or transferred without authorisation).

9 Export Control Order 2008, SI 2008/3231, art 40(1).

10 ie goods listed in EC Council Regulation 1334/2000 (OJ L159, 30.6.2000, p 1) Annex I. As to the meaning of 'dual-use' see PARA 817 note 3.

11 As to the meaning of 'customs territory' see PARA 817 note 20.

12 For these purposes, 'working day' means a day that is not a Saturday or Sunday, Christmas Day, Good Friday or any day that is a bank holiday under the Banking and Financial Dealings Act 1971 (see **TIME** vol 97 (2010) PARA 321) in the part of the United Kingdom where the goods referred to in the Export Control Order 2008, SI 2008/3231, art 40(2) have been detained: art 40(3).

13 Export Control Order 2008, SI 2008/3231, art 40(2).

14 ie in accordance with EC Council Regulation 1334/2000 (OJ L159, 30.6.2000, p 1) art 12(4) (customs procedures).

15 Export Control Order 2008, SI 2008/3231, art 40(2).

16 ie the Export Control Order 2008, SI 2008/3231, art 3, 4, 6, 7, 8, 9, 11, 12, 19, 20, 21, 22, 23, 37, 38 or 39 (see PARAS 817, 822, 825, 827), or art 31 so far as it relates to the powers of the Commissioners (see PARA 824).

17 ie EC Council Regulation 1334/2000 (OJ L159, 30.6.2000, p 1).

18 ie EC Council Regulation 1236/2005 (OJ L200, 30.7.2005, p 1).

19 Export Control Order 2008, SI 2008/3231, art 41(1) (amended by SI 2010/121). As to assigned matters see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 904.

20 The application is as follows:

17 (1) the Customs and Excise Management Act 1979 s 77A (provision as to information powers) applies to a person concerned in an activity which, if not authorised by a licence, would contravene: (a) the Export Control Order 2008, SI 2008/3231, art 3, 4, 6, 7, 8, 9, 11, 12, 19, 20, 21, 22 or 23; (b) the dual-use Regulation; or (c) the torture Regulation, and accordingly references in the Customs and Excise Management Act 1979 s 77A to exportation are to be read as including any such activity (Export Control Order 2008, SI 2008/3231, art 41(2) (amended by SI 2010/121));

18 (2) the Customs and Excise Management Act 1979 s 138 (provision as to arrest of persons) applies to the arrest of a person for an offence under the Export Control Order 2008, SI 2008/3231, as it applies to the arrest of a person for an offence under the customs and excise Acts (Export Control Order 2008, SI 2008/3231, art 41(3));

19 (3) the Customs and Excise Management Act 1979 ss 145, 146, 146A, 147, 148, 150, 151, 152, 154, and 155 (proceedings for offences, mitigation of penalties, proof and other matters) apply in relation to offences and penalties under the Export Control Order 2008, SI 2008/3231, as they apply in relation to offences and penalties under the customs and excise Acts (Export Control Order 2008, SI 2008/3231, art 41(4));

20 (4) for the purposes of the application of the Customs and Excise Management Act 1979 s 145 to the Export Control Order 2008, SI 2008/3231, only offences related to contraventions of the provisions referred to in art 41(1)(a) (see notes 16-18) are offences under the customs and excise Acts (Export Control Order 2008, SI 2008/3231, art 41(5));

21 (5) in the case of an offence committed in connection with a prohibition or restriction on exportation in the Export Control Order 2008, SI 2008/3231, Pt 2 (arts 3-18), the dual-use Regulation or the torture Regulation, the Customs and Excise Management Act 1979 ss 68(3)(b) and 170(3)(b) have effect as if for the words '7 years' there were substituted the words '10 years' (Export Control Order 2008, SI 2008/3231, art 42).

'Customs and excise Acts' has the same meaning as in the Customs and Excise Management Act 1979 s 1, ie the Customs and Excise Acts 1979 (see **CUSTOMS AND EXCISE** vol 12(2) (2007 Reissue) PARA 398) and any other

enactment for the time being in force relating to customs or excise: Export Control Order 2008, SI 2008/3231, art 2(1).

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826. Offences in connection with prohibitions and restrictions.

A person who contravenes a prohibition relating to export and transfer controls¹ or trade control² commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale³. However, a person who did not know, and had no reason to suppose, that goods⁴ were destined for an embargoed destination⁵ and is able to show those matters, is not guilty of an offence by reason of a contravention of the prohibition⁶ on supplying goods to an embargoed destination⁷.

A person who contravenes a prohibition relating to export and transfer controls or technical assistance controls⁸ that is engaged because the person:

- 14 (1) has been informed;
- 15 (2) is aware; or
- 16 (3) has grounds for suspecting,

that goods, software⁹ or technology¹⁰ are or may be intended, in their entirety or in part, for WMD purposes¹¹ commits an offence and may be arrested¹².

A person knowingly concerned in activity prohibited by export and transfer controls, technical assistance controls or trade controls¹³ with intent to evade the relevant prohibition commits an offence and may be arrested¹⁴.

A person who contravenes a prohibition or restriction in the provisions of the dual-use Regulation dealing with controls on listed goods¹⁵, military end-use¹⁶, end-use in items exported or transferred without authorisation¹⁷ or on the exportation or transfer of sensitive items within the customs territory¹⁸ commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale¹⁹. A person who: (a) contravenes a prohibition or restriction in the dual-use Regulation relating to end-use control for WMD purposes²⁰; or (b) fails to comply with the requirement in that Regulation to notify the competent authority²¹ in the case of awareness of end-use for certain military or WMD purposes²², commits an offence and may be arrested²³.

A person knowingly concerned in an activity prohibited or restricted by any of the provisions of the dual-use Regulation dealt with above²⁴ with intent to evade the relevant prohibition or restriction commits an offence and may be arrested²⁵.

A person who fails to comply with the requirements of the dual-use Regulation as to records and documents²⁶ commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale²⁷.

A person who contravenes an export prohibition or restriction in the torture Regulation in respect of the supply of technical assistance²⁸ as defined in that Regulation commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale²⁹. A person knowingly concerned in the provision of technical assistance as defined in the torture Regulation with intent to evade the prohibition on the provision of technical assistance in that Regulation³⁰ commits an offence and may be arrested³¹.

A person who contravenes an import prohibition or restriction in the torture Regulation³² in respect of the acceptance of technical assistance as defined in that Regulation commits an

offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale³³. A person knowingly concerned in the acceptance of technical assistance as defined in the torture Regulation with intent to evade the prohibition on the acceptance of technical assistance in that Regulation³⁴ commits an offence and may be arrested³⁵.

1 Ie in the Export Control Order 2008, SI 2008/3231, Pt 2 (arts 3-18): see PARAS 817-821.

2 Ie in the Export Control Order 2008, SI 2008/3231, Pt 4 (arts 20-25): see PARA 822.

3 Export Control Order 2008, SI 2008/3231, art 34(1). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142. Article 34(1) does not create an offence related to prohibitions on the exportation of goods (as to which see the Customs and Excise Management Act 1979; and **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1028 et seq): Export Control Order 2008, SI 2008/3231, art 34(7).

4 Ie the goods referred to in the Export Control Order 2008, SI 2008/3231, art 20: see PARA 822.

5 As to the meaning of 'embargoed destination' see PARA 822 note 14.

6 Ie in the Export Control Order 2008, SI 2008/3231, art 20.

7 Export Control Order 2008, SI 2008/3231, art 34(2).

8 Ie in the Export Control Order 2008, SI 2008/3231, Pt 2 or Pt 3 (art 19): see PARA 822.

9 As to the meaning of 'software' see PARA 817 note 4.

10 As to the meaning of 'technology' see PARA 817 note 5.

11 As to the meaning of 'WMD purposes' see PARA 817 note 18.

12 Export Control Order 2008, SI 2008/3231, art 34(3). A person guilty of such an offence is liable: (1) on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding 12 months, or to both; or (2) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or to both: art 34(4). As to the statutory maximum see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 140. In the case of an offence committed before the Criminal Justice Act 2003 s 154(1) comes into force, for '12 months' should be substituted 'six months': Export Control Order 2008, SI 2008/3231, art 34(8). At the date at which this volume states the law, no day had been appointed bringing the Criminal Justice Act 2003 s 154(1) into force.

13 Ie by the Export Control Order 2008, SI 2008/3231, Pt 2, Pt 3 or Pt 4. Article 34(5) does not create an offence related to prohibitions on the exportation of goods (as to which see the Customs and Excise Management Act 1979; and **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1028 et seq): Export Control Order 2008, SI 2008/3231, art 34(7).

14 Export Control Order 2008, SI 2008/3231, art 34(5). A person guilty of an offence under art 34(5) is liable: (1) on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding 12 months, or to both; or (2) on conviction on indictment, to a fine or to imprisonment for a term not exceeding ten years, or to both: art 34(6). In the case of an offence committed before the Criminal Justice Act 2003 s 154(1) comes into force, for '12 months' should be substituted 'six months': Export Control Order 2008, SI 2008/3231, art 34(8).

15 Ie in EC Council Regulation 1334/2000 (OJ L159, 30.6.2000, p 1) art 3(1).

16 Ie in EC Council Regulation 1334/2000 (OJ L159, 30.6.2000, p 1) art 4(2).

17 Ie in EC Council Regulation 1334/2000 (OJ L159, 30.6.2000, p 1) art 4(3).

18 Ie in EC Council Regulation 1334/2000 (OJ L159, 30.6.2000, p 1) art 21(1). As to the meaning of 'customs territory' see PARA 817 note 20.

19 Export Control Order 2008, SI 2008/3231, art 35(1). Article 35(1) does not create an offence related to prohibitions or restrictions on the exportation of goods from the United Kingdom (as to which see the Customs and Excise Management Act 1979; and **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1028 et seq): Export Control Order 2008, SI 2008/3231, art 35(8).

20 le in EC Council Regulation 1334/2000 (OJ L159, 30.6.2000, p 1) art 4(1). As to the meaning of 'WMD purposes' see PARA 817 note 18.

21 As to the meaning of 'competent authority' see PARA 817 note 31.

22 le in EC Council Regulation 1334/2000 (OJ L159, 30.6.2000, p 1) art 4(4).

23 Export Control Order 2008, SI 2008/3231, art 35(2) (amended by SI 2009/1305). A person guilty of an offence under the Export Control Order 2008, SI 2008/3231, art 35(2) is liable: (1) on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding 12 months, or to both; or (2) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or to both: art 35(3). In the case of an offence committed before the Criminal Justice Act 2003 s 154(1) comes into force, for '12 months' should be substituted 'six months': Export Control Order 2008, SI 2008/3231, art 35(9).

24 le EC Council Regulation 1334/2000 (OJ L159, 30.6.2000, p 1) art 3(1), 4(1), 4(2), 4(3) or 21(1).

25 Export Control Order 2008, SI 2008/3231, art 35(4). A person guilty of an offence under art 35(4) is liable: (1) on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding 12 months, or to both; or (2) on conviction on indictment, to a fine or to imprisonment for a term not exceeding ten years, or to both: art 35(5). In the case of an offence committed before the Criminal Justice Act 2003 s 154(1) comes into force, for '12 months' should be substituted 'six months': Export Control Order 2008, SI 2008/3231, art 35(9). Article 35(4) does not create an offence related to prohibitions or restrictions on the exportation of goods from the United Kingdom (as to which see the Customs and Excise Management Act 1979; and **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1028 et seq): Export Control Order 2008, SI 2008/3231, art 35(8).

26 le EC Council Regulation 1334/2000 (OJ L159, 30.6.2000, p 1) art 16 (record-keeping), 21(5) (records of exportation and transfer of listed items within the customs territory) or 21(7) (requirement in relation to commercial documents for exportation and transfer of listed items within the customs territory).

27 Export Control Order 2008, SI 2008/3231, art 35(7).

28 le in EC Council Regulation 1236/2005 (OJ L200, 30.7.2005, p 1) art 3(1) (export prohibition).

29 Export Control Order 2008, SI 2008/3231, art 36(1).

30 le in EC Council Regulation 1236/2005 (OJ L200, 30.7.2005, p 1) art 3(1) (export prohibition).

31 Export Control Order 2008, SI 2008/3231, art 36(2). A person guilty of an offence under art 36(2) is liable: (1) on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding 12 months, or to both; or (2) on conviction on indictment, to a fine or to imprisonment for a term not exceeding ten years, or to both: art 36(3). In the case of an offence committed before the Criminal Justice Act 2003 s 154(1) comes into force, for '12 months' should be substituted 'six months': Export Control Order 2008, SI 2008/3231, art 36(8).

32 le in EC Council Regulation 1236/2005 (OJ L200, 30.7.2005, p 1) art 4(1) (import prohibition).

33 Export Control Order 2008, SI 2008/3231, art 36(4).

34 le in EC Council Regulation 1236/2005 (OJ L200, 30.7.2005, p 1) art 4(1) (import prohibition).

35 Export Control Order 2008, SI 2008/3231, art 36(5). A person guilty of an offence under art 36(5) is liable: (1) on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding three months, or to both; or (2) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or to both: art 36(6).

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827. Offences in connection with export licences or authorisations.

Where for the purpose of obtaining a licence¹ a person (the 'applicant') either:

- 17 (1) makes a statement or furnishes a document or information which to the applicant's knowledge is false in a material particular; or
- 18 (2) recklessly makes a statement or furnishes a document or information which is false in a material particular,

the applicant commits an offence and any licence that has been granted in connection with the application for which the false statement was made or the false document or information was furnished is void as from the time it was granted².

A person who, having acted under the authority of a licence or the EU General Export Authorisation³, fails to comply with: (a) any of the requirements or conditions to which the licence or the EU General Export Authorisation is subject; or (b) any obligation as to registration or the keeping of records⁴, commits an offence⁵ unless: (i) the licence was modified after the completion of the act authorised; and (ii) the alleged failure to comply would not have been a failure had the licence not been so modified⁶.

A person who fails to comply with the requirement of the dual-use Regulation to provide relevant information for licence applications⁷ commits an offence and any licence which may have been granted in connection with the application is void as from the time it was granted⁸.

A person who fails to comply with the requirement of the torture Regulation to provide relevant information for licence applications⁹ commits an offence and any licence which may have been granted in connection with the application is void as from the time it was granted¹⁰.

1 As to the meaning of 'licence' see PARA 825 note 2. As to licences generally see PARA 823.

2 Export Control Order 2008, SI 2008/3231, art 37(1). A person guilty of an offence under art 37(1) is liable: (1) on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding three months, or to both; or (2) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or to both: art 37(2). As to the statutory maximum see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 140.

3 As to the meaning of 'the EU General Export Authorisation' see PARA 823 note 22.

4 Ie under the Export Control Order 2008, SI 2008/3231, art 28, 29, 30 or 31: see PARAS 823-824.

5 Export Control Order 2008, SI 2008/3231, art 38(1). A person guilty of an offence under art 38(1) is liable: (1) on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding three months, or to both; or (2) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or to both: art 38(3).

6 Export Control Order 2008, SI 2008/3231, art 38(2).

7 Ie EC Council Regulation 1334/2000 (OJ L159, 30.6.2000, p 1) art 9(1).

8 Export Control Order 2008, SI 2008/3231, art 35(6). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: art 35(6). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

9 In EC Council Regulation 1236/2005 (OJ L200, 30.7.2005, p 1) art 8(2).

10 Export Control Order 2008, SI 2008/3231, art 36(7). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: art 36(7).

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828. Use and disclosure of information.

Restrictions apply to information¹ which is held from time to time by the Secretary of State² or the Commissioners for Revenue and Customs³ in connection with the operation of controls imposed by the Export Control Order 2008⁴ or by any directly applicable European Union (EU) provision on the export⁵ of goods, the transfer⁶ of software⁷ or technology⁸, participation in the provision of technical assistance, or activities which facilitate, or are otherwise connected with, the acquisition, disposal or movement of goods⁹. Such information may be used for the purposes of, or for any purposes connected with:

- 19 (1) the exercise of functions in relation to any control imposed by the Export Control Order 2008 or by any other order made under the Export Control Act 2002;
- 20 (2) giving effect to any EU provision or other international obligation of the United Kingdom¹⁰;
- 21 (3) facilitating the exercise by an authority or international organisation outside the United Kingdom of functions which correspond to functions conferred by or in connection with any activity subject to control by the Export Control Order 2008 or any other order made under the Export Control Act 2002,

and may be disclosed to any person for use for these purposes¹¹.

No disclosure of information may be made by virtue of the above provisions unless the making of the disclosure is proportionate to the object of the disclosure¹²; and nothing in these provisions affects any power to disclose information that exists apart from these provisions¹³.

The information that may be disclosed by virtue of these provisions includes information obtained before the 2008 Order came into force¹⁴.

1 For these purposes, 'information' is any information that relates to a particular business or other activity carried on by a person: Export Control Order 2008, SI 2008/3231, art 43(4).

2 As to the Secretary of State see PARA 802.

3 As to the Commissioners for Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 900 et seq.

4 In the Export Control Order 2008, SI 2008/3231: see PARA 817 et seq.

5 As to the meaning of 'export' see PARA 817 note 8.

6 As to the meaning of 'transfer' see PARA 817 note 39.

7 As to the meaning of 'software' see PARA 817 note 4.

8 As to the meaning of 'technology' see PARA 817 note 5.

9 Export Control Order 2008, SI 2008/3231, art 43(1).

10 As to the meaning of 'United Kingdom' see PARA 806 note 7.

11 Export Control Order 2008, SI 2008/3231, art 43(2).

12 Export Control Order 2008, SI 2008/3231, art 43(3).

13 Export Control Order 2008, SI 2008/3231, art 43(5).

14 Export Control Order 2008, SI 2008/3231, art 43(6). As to the commencement of the Order see PARA 817 note 6.

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C. PARTICULAR GOODS

829. Control under particular enactments.

In addition to general controls on imports and exports, many enactments place restrictions on the importation or exportation of particular goods. Most of these restrictions, which are dealt with specifically elsewhere in this work, are on importation, often with a view to the prevention of the spread of disease or the control of dangerous things¹. Such restrictions may, however, be modified so as to allow the importation of goods from other EU member states². The export of dangerous chemicals is controlled under European Union law³.

Restrictions may also be imposed by Order in Council under the United Nations Act 1946⁴ in order to give effect to sanctions imposed by the United Nations Security Council⁵; and the Secretary of State⁶ has power to require persons carrying on business in the United Kingdom⁷ to give him notice of any requirement or prohibition imposed or threatened to be imposed on those persons by measures by or under the law of any overseas country for regulating or controlling international trade which may be damaging to the trading interests of the United Kingdom, and to prohibit compliance with any such measures⁸. Certain types of assistance to specified countries relating to military activities are subject to controls and criminal penalties⁹.

1 See eg the Products of Animal Origin (Third Country Imports) (England) Regulations 2006, SI 2006/2841; Products of Animal Origin (Third Country Imports) (Wales) Regulations 2007, SI 2007/376; and **ANIMALS** vol 2 (2008) PARA 1084; the Genetically Modified Organisms (Transboundary Movements) (England) Regulations 2004, SI 2004/2692, and the Genetically Modified Organisms (Transboundary Movements) (Wales) Regulations 2005, SI 2005/1912, which implement European Parliament and EC Council Regulation 1946/2003 (OJ L287, 5.11.2003, p 1) on transboundary movements of genetically modified organisms; and **FOOD** vol 18(2) (Reissue) PARA 349. See also the Environmental Protection Act 1990 s 140 (power to prohibit or restrict the importation, use, supply or storage of injurious substances or articles); and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 790.

2 Eg the definition of 'transboundary movement' in European Parliament and EC Council Regulation 1946/2003 (OJ L287, 5.11.2003, p 1) art 3(14) excludes intentional movements of genetically modified organisms between parties within the European Union.

3 See the Export and Import of Dangerous Chemicals Regulations 2008, SI 2008/2108, made by the Secretary of State in exercise of powers conferred by the European Communities Act 1972 s 2(2) in order to give effect to European Parliament and EC Council Regulation 689/2008 concerning the export and import of dangerous chemicals (OJ L204, 31.7.08, p 1) (the 'European Regulation'), which aims to establish a common system of notification and information for imports from and exports to countries which are not member states. The Health and Safety Executive is the designated national authority to act for the performance of the administrative functions required by the European Regulation, in accordance with art 4, and has the responsibility of controlling the import and export of chemicals listed in Annex I, in accordance with art 17: Export and Import of Dangerous Chemicals Regulations 2008, SI 2008/2108, reg 2. As to the Health and Safety Executive see **HEALTH AND SAFETY AT WORK** vol 52 (2009) PARA 361 et seq. An exporter or importer must not provide information pursuant to the requirements of any article of the European Regulation knowing it to be false or misleading in a material particular, or being reckless as to whether it is false or misleading in a material particular: Export and Import of Dangerous Chemicals Regulations 2008, SI 2008/2108, reg 3. The Health and Safety Executive has a duty to make adequate arrangements for the enforcement of the European Regulation and the Export and Import of Dangerous Chemicals Regulations 2008, SI 2008/2108: see reg 4(1), (3). The Health and Safety at Work etc Act 1974 ss 19, 20, 25A-28, 33-42 apply for the purposes of enforcement of the European Regulation and the 2008 Regulations as if they were health and safety regulations for the purposes of the 1974 Act, and any function of the Health and Safety Executive under any other provision of the Health and Safety at Work etc Act 1974 is exercisable as if the European Regulation and the 2008 Regulations were health and safety regulations for the purposes of the 1974 Act (see **HEALTH AND SAFETY AT WORK** vol 52 (2009) PARAS 424-425): Export and Import of Dangerous Chemicals Regulations 2008, SI 2008/2108, reg 4(2), (3). However,

contravention of European Parliament and EC Council Regulation 689/2008 (OJ L204, 31.7.08, p 1) art 14(2) is subject to enforcement under the Customs and Excise Management Act 1979, and not as a contravention of a health and safety regulation, and a failure to discharge a duty placed by the European Regulation on a designated national authority, or by the 2008 Regulations on the Health and Safety Executive, is not an offence under the Health and Safety at Work etc Act 1974 s 33(1)(c): Export and Import of Dangerous Chemicals Regulations 2008, SI 2008/2108, reg 4(8), (9). The Health and Safety at Work etc Act 1974 ss 25A(1) and 27A(1) are modified for the purposes of the Export and Import of Dangerous Chemicals Regulations 2008, SI 2008/2108, reg 4(2): see reg 4(4). See also EC Council Decision 2003/106 (OJ L63, 6.3.2003, p 27) on the approval of the Rotterdam Convention on the Prior Informed Consent Procedure for certain hazardous chemicals and pesticides in international trade, and EC Council Decision 2006/730 (OJ L299 28.10.2006 p 23) on the conclusion, on behalf of the European Community of the Rotterdam Convention.

4 Ie under the United Nations Act 1946 s 1: see **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 526.

5 See eg the Libya (United Nations Sanctions) Order 1993, SI 1993/2807; the Iran (United Nations Sanctions) Order 2009, SI 2009/886; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 808.

6 As to the Secretary of State see PARA 802. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 802 note 21.

7 As to the meaning of 'United Kingdom' see PARA 806 note 7.

8 See the Protection of Trading Interests Act 1980 s 1; and **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 234.

9 See eg the Sudan (Technical Assistance and Financing and Financial Assistance) (Penalties and Licences) Regulations 2004, SI 2004/373 (amended by SI 2005/3389); and the Export Control (Liberia) Order 2006, SI 2006/2065.

Halsbury's Laws of England/TRADE AND INDUSTRY (VOLUME 97 (2010) 5TH EDITION)/2. LEGISLATIVE CONTROLS/(2) EXCISE RESTRICTIONS/830. Excise licences.

(2) EXCISE RESTRICTIONS

830. Excise licences.

An excise licence¹ must be in such form and contain such particulars as the Commissioners for Revenue and Customs² direct and, subject to any enactment relating to the licence or trade in question, may be granted by the proper officer³ on payment of any appropriate duty⁴. If any person who is the holder of an excise licence to carry on any trade or to manufacture or sell any goods fails to produce his licence for examination within one month after being so requested by an officer, his failure attracts a penalty⁵.

1 As to excise licences generally see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 622 et seq.

2 As to the Commissioners for Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 900 et seq.

3 Subject to the Customs and Excise Management Act 1979 s 8(2), which enables any person to be engaged in revenue and customs duties (see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 904), 'officer' means a person commissioned by the Commissioners for Revenue and Customs; and 'proper', in relation to the person by, with or to whom, or the place at which, anything is to be done, means the person or place appointed or authorised in that behalf by the commissioners: s 1(1) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)).

4 Customs and Excise Management Act 1979 s 101(1) (amended by the Finance Act 1986 s 8(6), Sch 5 para 1; and by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)). An excise licence for the carrying on of a trade is to be granted in respect of one set of premises only, but a licence for the same trade may be granted to the same person in respect of each of two or more sets of premises: Customs and Excise Management Act 1979 s 101(2). Where an excise licence trade is carried on at any set of premises by two or more persons in partnership, then, subject to any special provisions relating to the licence trade in question, not more than one licence is required to be held by those persons in respect of those premises at any one time: s 101(3) (amended by the Finance Act 1986 Sch 5 para 1).

5 Customs and Excise Management Act 1979 s 101(4) (amended by the Finance Act 1994 s 9(9), Sch 4 para 5). The penalty is under the Finance Act 1994 s 9: see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1218.

Halsbury's Laws of England/TRADE AND INDUSTRY (VOLUME 97 (2010) 5TH EDITION)/2. LEGISLATIVE CONTROLS/(2) EXCISE RESTRICTIONS/831. Hydrocarbon oils.

831. Hydrocarbon oils.

With a view to the protection of the revenue¹ the Commissioners for Revenue and Customs² may make regulations: (1) prohibiting the production of hydrocarbon oil³ except by a person holding a licence; (2) specifying the circumstances in which any such licence may be surrendered or revoked; (3) regulating the production, storage and warehousing⁴ of hydrocarbon oil and the removal of any such oil to or from premises used in its production; (4) prohibiting the refining of hydrocarbon oil elsewhere than in a refinery⁵; (5) prohibiting the incorporation of gas in hydrocarbon oil elsewhere than in a refinery; and (6) regulating the use and storage of hydrocarbon oil in a refinery⁶. They may also protect the revenue by: (a) regulating or prohibiting the removal to a refinery of hydrocarbon oil in respect of which any rebate⁷ has been allowed; (b) regulating the removal of imported hydrocarbon oil to a refinery without payment of the excise duty on such oil; (c) making provision for securing payment of the excise duty on any imported hydrocarbon oil received into a refinery; (d) relieving from the excise duty chargeable on hydrocarbon oil produced in the United Kingdom⁸ any such oil intended for exportation or shipment⁹ as stores¹⁰; (e) conferring power to require information relating to the supply or use of aviation gasoline¹¹ to be given by producers, dealers and users; and (f) requiring producers and users of and dealers in aviation gasoline to keep and produce records relating to aviation gasoline¹².

Where any person contravenes or fails to comply with such a regulation his contravention or failure to comply attracts a penalty¹³ and any goods¹⁴ in respect of which any person contravenes or fails to comply with any such regulation are liable to forfeiture¹⁵.

In addition to the above provisions, the Secretary of State¹⁶ is empowered to make regulations for the implementation of the EU Treaty¹⁷ obligations in relation to the conditions for granting and using authorisations for the prospection, exploration and production of hydrocarbons¹⁸.

1 As to revenue and excise duties on hydrocarbon oil see **CUSTOMS AND EXCISE** vol 12(2) (2007 Reissue) PARA 508 et seq (excise duties).

2 As to the Commissioners for Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 900 et seq.

3 'Hydrocarbon oil' means petroleum oil, coal tar and oil produced from coal, shale, peat or any other bituminous substance, and all liquid hydrocarbons, but does not include such hydrocarbons or bituminous or asphaltic substances as are: (1) solid or semi-solid at a temperature of 15° C; or (2) gaseous at a temperature of 15° C and under a pressure of 1013.25 millibars: Hydrocarbon Oil Duties Act 1979 ss 1(2), 27(1).

4 'Warehouse', except in the expressions 'Queen's warehouse' and 'distiller's warehouse', means a place of security approved by the Commissioners for Revenue and Customs under the Customs and Excise Management Act 1979 s 92(1) (excise warehouse) or s 92(2) (customs warehouse) or both s 92(1) and s 92(2) and, except in s 92, also includes a distiller's warehouse; and 'warehoused' and cognate expressions are, subject to s 92(4) and any regulations made by virtue of s 93(2)(da)(i) or (e) or (4), construed accordingly: s 1(1) (amended by the Finance (No 2) Act 1992 s 3, Sch 2 para 1; and by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)); definition applied by the Hydrocarbon Oil Duties Act 1979 s 27(3).

5 'Refinery' means any premises which: (1) are approved by the Commissioners for Revenue and Customs for the treatment of hydrocarbon oil; or (2) are approved by them for the production of energy for use in the treatment of hydrocarbon oil at such approved premises or in the production of hydrocarbon oil at other premises used for the production of such oil; and the commissioners may approve any such premises if it appears to them that more than one-third of the energy will be produced for such use: Hydrocarbon Oil Duties Act 1979 s 27(1) (definition substituted by the Finance Act 1981 s 5(3)). If in the case of any premises which the Commissioners can approve it appears to them appropriate to do so, they may direct that the provisions of the Hydrocarbon Oil Duties Act 1979 (other than the definition of 'refinery') applies to them as if, instead of being a

refinery, they were other premises used for the production of hydrocarbon oil: s 27(1A) (added by the Finance Act 1981 s 5(4)).

6 Hydrocarbon Oil Duties Act 1979 s 21(1)(a), Sch 3 Pt I paras 1-6 (Sch 3 Pt I para 2 substituted by the Finance Act 1986 s 8(6), Sch 5 para 4). In the case of regulations made for the purposes of the Hydrocarbon Oil Duties Act 1979 Sch 3 Pt I (paras 1-11), different regulations may be made for different classes of hydrocarbon oil; and the power to make such regulations must include power to make regulations: (1) regulating the allowance and payment of drawback under or by virtue of the Hydrocarbon Oil Duties Act 1979 s 15 (drawback of duty on exportation etc of certain goods) (see **CUSTOMS AND EXCISE** vol 12(2) (2007 Reissue) PARA 548); and (2) for making the allowance and payment of drawback by virtue of an order under s 15(2) subject to such conditions as the commissioners see fit to impose for the protection of the revenue: s 21(2)(a), (b). Any power to make regulations under the Hydrocarbon Oil Duties Act 1979 is exercisable by statutory instrument, subject to annulment in pursuance of a resolution of either House of Parliament: s 25. See **PARLIAMENT** vol 34 (Reissue) PARA 945. See the Hydrocarbon Oil Regulations 1973, SI 1973/1311 (amended by SI 1976/443; SI 1977/1868; SI 1981/1134; SI 1985/1033; SI 1985/1450; SI 1992/3149; SI 1993/2267; SI 1994/694; SI 1996/2537; SI 2002/1471; SI 2002/1773; and SI 2008/753), which were originally made under the Hydrocarbon Oil (Customs and Excise) Act 1971 (repealed) but now have effect under the Hydrocarbon Oil Duties Act 1979 ss 21, 24, Sch 3 Pts I, II, Sch 4 by virtue of s 28(6) and the Interpretation Act 1978 s 17(2)(b). By virtue of the Hydrocarbon Oil Duties Act 1979 ss 20AA, 24, the regulations also cover the granting of reliefs, the mixing of oil, the marking of oil, the control of storage and supply of oil, the keeping of records and the entry of premises: **CUSTOMS AND EXCISE** vol 12(2) (2007 Reissue) PARA 549. The sampling of oil is governed by the Hydrocarbon Oil Duties Act 1979 s 24(5), Sch 5: see **CUSTOMS AND EXCISE** vol 12(2) (2007 Reissue) PARA 577.

7 'Rebate' means rebate of duty under the Hydrocarbon Oil Duties Act 1979 s 11, 13ZA, 13AA, 14, 14A, 14B or 20AB (see **CUSTOMS AND EXCISE** vol 12(2) (2007 Reissue) PARA 535 et seq) and 'rebated' has a corresponding meaning: Hydrocarbon Oil Duties Act 1979 s 27(1) (definition amended by the Finance Act 1987 s 1(3), (4); the Finance Act 2001 s 3(3); the Finance Act 2002 s 6(1), Sch 3 Pt 2 paras 5, 9; and the Finance Act 2008 ss 13(1), (9)(a), 14, 16(3), Sch 5 paras 1, 22(1), (2)(d), Sch 6 Pt 2 paras 24, 32).

8 As to the meaning of 'United Kingdom' see PARA 806 note 7.

9 'Shipment' includes loading into an aircraft, and 'shipped' and cognate expressions must be construed accordingly: Customs and Excise Management Act 1979 s 1(1); definitions applied by the Hydrocarbon Oil Duties Act 1979 s 27(3).

10 As to the meaning of 'stores' see the Customs and Excise Management Act 1979 s 1(1); and PARA 808 note 6; definition applied by the Hydrocarbon Oil Duties Act 1979 s 27(3).

11 'Aviation gasoline' means light oil which: (1) is specially produced as fuel for aircraft; (2) at 37.8° C, has a Reid Vapour Pressure of not less than 38 kPa and not more than 49 kPa; and (3) is delivered for use solely as fuel for aircraft: Hydrocarbon Oil Duties Act 1979 ss 1(3D), 27(1) (s 1(3D) added by the Finance Act 2008 s 16(3), Sch 6 Pt 1 paras 1, 6; definition in the Hydrocarbon Oil Duties Act 1979 s 27(1) added by the Finance Act 1982 s 4(1); and amended by the Finance Act 2008 Sch 6 Pt 1 para 6). 'Light oil' means hydrocarbon oil of which at least 90% by volume distils at a temperature not exceeding 210° C, or which gives off an inflammable vapour at a temperature of less than 23° C when tested in the manner prescribed by the Acts relating to petroleum: Hydrocarbon Oil Duties Act 1979 ss 1(3), 27(1). 'Road vehicle' means a vehicle constructed or adapted for use on roads but does not include any vehicle which is an 'excepted vehicle', ie an excepted vehicle within the meaning given by Sch 1: s 27(1) (definitions amended and added respectively by the Finance Act 2008 s 14, Sch 5 paras 1, 22(1), (2)(e), (b)).

12 Hydrocarbon Oil Duties Act 1979 Sch 3 Pt I paras 7-10C (para 10A added by the Finance Act 1982 s 4(5); substituted by the Finance Act 1990 s 3(5); and repealed by the Finance Act 2008 s 16(3), Sch 6 Pt 1 paras 1, 7; and the Hydrocarbon Oil Duties Act 1979 Sch 3 paras 10B, 10C added by the Finance Act 1982 s 4(5)). Power is also conferred for securing and collecting the excise duty chargeable on hydrocarbon oil: see the Hydrocarbon Oil Duties Act 1979 Sch 3 Pt I para 11 (amended by the Finance Act 1985 Sch 4 para 4, Sch 27 Pt I). See **CUSTOMS AND EXCISE** vol 12(2) (2007 Reissue) PARA 571.

13 Is a penalty under the Finance Act 1994 s 9 (civil penalties): see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1218.

14 As to the meaning of 'goods' see the Customs and Excise Management Act 1979 s 1(1); and PARA 808 note 6; definition applied by the Hydrocarbon Oil Duties Act 1979 s 27(3).

15 Hydrocarbon Oil Duties Act 1979 s 21(3) (amended by the Finance Act 1994 s 9(9), Sch 4 para 55).

16 As to the Secretary of State see PARA 802. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 802 note 21.

17 Ie the Treaty on the Functioning of the European Union (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179). The Treaty was formerly known as the Treaty Establishing the European Community; it has been renamed and its provisions renumbered: see PARA 811 note 15.

18 See the European Communities (Designation) (No 2) Order 1994, SI 1994/1327, made under the European Communities Act 1972 s 2(2).

Halsbury's Laws of England/TRADE AND INDUSTRY (VOLUME 97 (2010) 5TH EDITION)/2. LEGISLATIVE CONTROLS/(2) EXCISE RESTRICTIONS/832. Licence to manufacture or deal wholesale in denatured alcohol.

832. Licence to manufacture or deal wholesale in denatured alcohol.

Any distiller, rectifier or compounder¹ may be authorised by the Commissioners for Revenue and Customs² to denature dutiable alcoholic liquor³, and no person not so authorised may denature dutiable alcoholic liquor or deal wholesale⁴ in denatured alcohol unless he holds an excise licence as a denaturer⁵ or in the case of dealing wholesale is exempted by regulations from holding such a licence⁶. The Commissioners may at any time revoke or suspend any such authorisation or licence⁷.

1 'Distiller' means a person holding a distiller's licence under the Alcoholic Liquor Duties Act 1979 s 12 (see **CUSTOMS AND EXCISE** vol 12(2) (2007 Reissue) PARAS 418-419); 'rectifier' means a person holding a licence as a rectifier under s 18 (see **CUSTOMS AND EXCISE** vol 12(2) (2007 Reissue) PARA 425); and 'compounder' means a person holding a licence as a compounder under s 18 (see **CUSTOMS AND EXCISE** vol 12(2) (2007 Reissue) PARA 425): s 4(1).

2 As to the Commissioners for Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 900 et seq. As to substitution of references to the Commissioners for references to the Commissioners of Customs and Excise see the Commissioners for Revenue and Customs Act 2005 s 50(1), (7).

3 Alcoholic Liquor Duties Act 1979 s 75(1) (amended by the Finance Act 1995 s 5(5)-(7), Sch 2 para 5). Any person so authorised is referred to as an 'authorised denaturer': Alcoholic Liquor Duties Act 1979 ss 4(1), 75(1) (amended by the Finance Act 1995 Sch 2 paras 1, 5). 'Dutiable alcoholic liquor' means any of the liquors mentioned in the Alcoholic Liquor Duties Act 1979 s 1(1) (see **CUSTOMS AND EXCISE** vol 12(2) (2007 Reissue) PARA 399): see ss 1(1), 4(1).

4 'Dealing wholesale' means the sale at any one time to any one person of a quantity of denatured alcohol of not less than 20 litres or such smaller quantity as the Commissioners may by regulations specify: Alcoholic Liquor Duties Act 1979 s 75(7) (amended by the Finance Act 1995 s 5(5)-(7), Sch 2 para 5; and by SI 1979/241). At the date at which this volume states the law, no such regulations had been made. 'Denatured alcohol' means denatured alcohol within the meaning of the Finance Act 1995 s 5 and references to denaturing a liquor are references to subjecting it to any process by which it becomes denatured alcohol: Alcoholic Liquor Duties Act 1979 s 4(1) (definition added by the Finance Act 1995 Sch 2 para 1).

5 Alcoholic Liquor Duties Act 1979 s 75(2) (amended by the Finance Act 1995 Sch 2 para 5). Where any person not being an authorised denaturer (see note 3), denatures dutiable alcoholic liquor otherwise than under and in accordance with a licence under the Alcoholic Liquor Duties Act 1979 s 75 (see **CUSTOMS AND EXCISE** vol 12(2) (2007 Reissue) PARA 506) his doing so will attract a penalty under the Finance Act 1994 s 9 (civil penalties) (see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1218): Alcoholic Liquor Duties Act 1979 s 75(5) (amended by the Finance Act 1994 s 9, Sch 4 para 45; and the Finance Act 1995 Sch 2 para 5). As to excise licences generally see PARA 830.

6 See the Alcoholic Liquor Duties Act 1979 s 77(1)(d) (amended by the Finance Act 1981 s 11(1), Sch 8 para 23(a); and the Finance Act 1995 Sch 2 para 5). As to the penalties for failing to comply with regulations made under the Alcoholic Liquor Duties Act 1979 s 77 see PARA 833.

7 Alcoholic Liquor Duties Act 1979 s 75(6).

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LEGISLATIVE CONTROLS/(2) EXCISE RESTRICTIONS/833. Production, storage and transfer etc of denatured alcohol.

833. Production, storage and transfer etc of denatured alcohol.

With a view to the protection of the revenue the Commissioners for Revenue and Customs¹ may make regulations²:

- 22 (1) regulating the denaturing of dutiable alcoholic liquor³ and the supply, storage, removal, sale, delivery, receipt, use and exportation or shipment⁴ as stores⁵ of denatured alcohol⁶.
- 23 (2) permitting dutiable alcoholic liquor to be denatured in warehouse⁷;
- 24 (3) permitting dealing wholesale⁸ without a licence in specified denatured alcohol⁹;
- 25 (4) regulating the importation, receipt, removal, storage and use of dutiable alcoholic liquor for denaturing¹⁰;
- 26 (5) regulating the storage and removal of substances to be used in denaturing dutiable alcoholic liquor¹¹;
- 27 (6) prescribing the manner in which account is to be kept of stocks of denatured alcohol in the possession of authorised or licensed denaturers¹² and of retailers¹³ of denatured alcohol¹⁴;
- 28 (7) for securing any duty¹⁵ chargeable in respect of denatured alcohol of any class¹⁶.

If any person contravenes or fails to comply with any such regulation, or with any condition, restriction or requirement imposed under such a regulation, his contravention or failure to comply attracts a penalty¹⁷. If, save as permitted by any regulation, any person deals wholesale in denatured alcohol otherwise than under and in accordance with a licence¹⁸, his doing so attracts a penalty¹⁹, and any spirits or denatured alcohol in respect of which there is such a contravention or failure to comply or any such dealing is liable to forfeiture²⁰. If any person: (a) supplies to another, in contravention of any regulations, any denatured alcohol containing dutiable alcoholic liquor of any description; or (b) uses any such denatured alcohol in contravention of any such regulations, that person must, on demand by the Commissioners, pay on the amount of dutiable alcoholic liquor of that description comprised, at the time of its supply or use, in the denatured alcohol that is so supplied or used, or on such part of it as the Commissioners may specify, the duty payable on dutiable alcoholic liquor of that description²¹.

1 As to the Commissioners for Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 900 et seq. As to substitution of references to the Commissioners for references to the Commissioners of Customs and Excise see the Commissioners for Revenue and Customs Act 2005 s 50(1), (7).

2 The power to make regulations is exercisable by statutory instrument (Alcoholic Liquor Duties Act 1979 s 90(1)), and any such statutory instrument is subject to annulment in pursuance of a resolution of either House of Parliament (s 90(2); and see **PARLIAMENT** vol 34 (Reissue) PARA 945). Different regulations may be made under s 77 with respect to different classes of denatured alcohol or different kinds of denatured alcohol of any class: s 77(2) (amended by the Finance Act 1995 s 5(5)-(7), Sch 2 para 5). Without prejudice to the generality of the Alcoholic Liquor Duties Act 1979 s 77(1), regulations may: (1) provide for the imposition of conditions and restrictions relating to the matters there mentioned; and (2) frame any provision of the regulations with respect to the supply, receipt or use of denatured alcohol by reference to matters to be contained from time to time in a notice published in accordance with the regulations by the Commissioners and having effect until withdrawn in accordance with the regulations; and (3) impose or provide for the imposition of requirements on authorised or licensed denaturers and on retailers of denatured alcohol to keep and preserve records relating to their businesses as such and to produce them to an officer when required to do so for the purposes of allowing him to

inspect them, copy or take extracts from them or remove them at a reasonable time and for a reasonable period: s 77(2)(a), (aa), (b) (s 77(2)(a), (b) added by the Finance Act 1981 s 11(1), Sch 8 para 23(b); and amended by the Finance Act 1995 s 5(5)-(7), Sch 2 para 5; and the Alcoholic Liquor Duties Act 1979 s 77(2)(aa) added by the Finance Act 1995 Sch 2 para 6). Where documents removed under this power are lost or damaged, the Commissioners are liable to compensate their owner for any expenses reasonably incurred by him in replacing or repairing them: Alcoholic Liquor Duties Act 1979 s 77(2A) (added by the Finance Act 1981 Sch 8 para 23(b)).

See the Denatured Alcohol Regulations 2005, SI 2005/1524, which make provision as to classes of denatured alcohol and formulations (Pt 2 (regs 4-7), Schedule), producers and distributors of denatured alcohol (Pt 3 (regs 8-11)), the receipt, use and supply of denatured alcohol (Pt 4 (regs 12-15)), the recovery of alcohol (reg 16), the disposal of stocks of denatured alcohol (reg 17), and importing and exporting denatured alcohol (reg 18).

3 As to the meaning of 'denaturing a liquor' see PARA 832 note 4; and as to the meaning of 'dutiable alcoholic liquor' see PARA 832 note 3.

4 As to the meanings of 'shipment' and 'shipped' see PARA 831 note 9; definitions applied by the Alcoholic Liquor Duties Act 1979 s 4(3).

5 As to the meaning of 'stores' see PARA 808 note 6; definition applied by the Alcoholic Liquor Duties Act 1979 s 4(3).

6 Alcoholic Liquor Duties Act 1979 s 77(1)(a) (s 77(1)(a), (c), (d), (e)-(h) amended by the Finance Act 1995 Sch 2 para 5). As to the meaning of 'denatured alcohol' see PARA 832 note 4.

7 Alcoholic Liquor Duties Act 1979 s 77(1)(c) (as amended: see note 6). As to the meaning of 'warehouse' see PARA 831 note 4; definition applied by s 4(3).

8 Ie within the meaning of the Alcoholic Liquor Duties Act 1979 s 75: see PARA 832.

9 Alcoholic Liquor Duties Act 1979 s 77(1)(d) (as amended (see note 6); and amended by the Finance Act 1981 Sch 8 para 23(a)).

10 Alcoholic Liquor Duties Act 1979 s 77(1)(e) (as amended: see note 6).

11 Alcoholic Liquor Duties Act 1979 s 77(1)(f) (as amended: see note 6).

12 As to the meaning of 'authorised denaturer' see PARA 832 note 3. 'Licensed denaturer' means a person holding a licence under s 75(2): s 4(1) (definition substituted by the Finance Act 1995 Sch 2 para 1). See PARA 832.

13 'Retailer' means, in relation to dutiable alcoholic liquor, a person who sells such liquor by retail: Alcoholic Liquor Duties Act 1979 s 4(1) (definition amended by the Finance Act 1981 s 139(6), Sch 13 Pt III).

14 Alcoholic Liquor Duties Act 1979 s 77(1)(g) (as amended: see note 6).

15 'Duty' means excise duty: Alcoholic Liquor Duties Act 1979 ss 1(1), 4(1). As to the duty payable on alcohol see **CUSTOMS AND EXCISE** vol 12(2) (2007 Reissue) PARA 410 et seq.

16 Alcoholic Liquor Duties Act 1979 s 77(1)(h) (as amended: see note 6).

17 Alcoholic Liquor Duties Act 1979 s 77(3) (amended by the Finance Act 1981 Sch 8 para 23(c); and the Finance Act 1994 s 9, Sch 4 para 46(1)). The penalty is under the Finance Act 1994 s 9 (civil penalties): see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1218.

18 Ie a licence under the Alcoholic Liquor Duties Act 1979 s 75: see s 77(4); and PARA 832.

19 Alcoholic Liquor Duties Act 1979 s 77(4) (amended by the Finance Act 1981 Sch 8 para 23(d), Sch 19 Pt III; and the Finance Act 1995 Sch 2 para 5). The penalty is under the Finance Act 1994 s 9 (civil penalties): see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1218.

20 Alcoholic Liquor Duties Act 1979 s 77(5) (amended by the Finance Act 1994 Sch 4 para 46(3); and the Finance Act 1995 Sch 2 para 5).

21 Alcoholic Liquor Duties Act 1979 s 78(5) (s 78 substituted by the Finance Act 1995 Sch 2 para 7). Any supply of denatured alcohol to a person who: (1) by virtue of any regulations under the Alcoholic Liquor Duties Act 1979 s 77 is prohibited from receiving it unless authorised to do so by or under the regulations; and (2) is not so authorised in the case of the denatured alcohol supplied to him, is to be taken for the purposes of s 78(5) to be a supply in contravention of those regulations: s 78(6) (as so substituted). A demand made for the

purposes of s 78(5) must be combined, as if there had been a default such as is mentioned in that section, with an assessment and notification under the Finance Act 1994 s 12 (assessments to excise duty: see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1231) of the amount of duty due in consequence of the making of the demand: Alcoholic Liquor Duties Act 1979 s 78(7) (as so substituted).

UPDATE

833 Production, storage and transfer etc of denatured alcohol

NOTES 6, 10--See the Excise Goods (Holding, Movement and Duty Point) Regulations 2010, SI 2010/593.

Halsbury's Laws of England/TRADE AND INDUSTRY (VOLUME 97 (2010) 5TH EDITION)/2. LEGISLATIVE CONTROLS/(2) EXCISE RESTRICTIONS/834. Liability for defaults in respect of denatured alcohol.

834. Liability for defaults in respect of denatured alcohol.

If, at any time when an account is taken and a balance struck of the quantity of any kind of denatured alcohol¹ in the possession of an authorised or licensed denaturer², there is a difference between:

- 29 (1) the quantity (the 'actual amount') of the dutiable alcoholic liquor³ of any description in the denatured alcohol in his possession; and
- 30 (2) the quantity (the 'proper amount') of dutiable alcoholic liquor of that description which, according to any such accounts as are required to be kept by virtue of any regulations⁴, ought to be in the denatured alcohol in his possession,

and the actual amount exceeds the proper amount, the relevant amount of any dutiable alcoholic liquor of the description in question which is in the possession of the denaturer is liable to forfeiture; and for this purpose the relevant amount is the amount corresponding to the amount of the excess or such part of that amount as the Commissioners for Revenue and Customs consider appropriate⁵. If the actual amount is less than the proper amount, the denaturer must, on demand by the Commissioners, pay on the amount of the deficiency, or on such part of it as the Commissioners may specify in the demand, the duty⁶ payable on dutiable alcoholic liquor of the description comprised in the deficiency⁷. These provisions do not apply if the difference constitutes: (a) an excess of the actual amount over the proper amount of not more than 1 per cent of the aggregate of: (i) the quantity of dutiable alcoholic liquor of the description in question in the balance of dutiable alcoholic liquor struck when an account was last taken; and (ii) the quantity of dutiable alcoholic liquor of that description which has since been lawfully added to the denaturer's stock; or (b) a deficiency such that the actual amount is less than the proper amount by not more than 2 per cent of that aggregate⁸.

1 As to the meaning of 'denatured alcohol' see PARA 832 note 4.

2 As to the meaning of 'authorised denaturer' PARA 832 note 3; and as to the meaning of 'licensed denaturer' see PARA 833 note 12.

3 As to the meaning of 'dutiable alcoholic liquor' see PARA 832 note 3.

4 Ie any regulations under the Alcoholic Liquor Duties Act 1979 s 77: see PARA 833.

5 Alcoholic Liquor Duties Act 1979 s 78(1), (3) (s 78 substituted by the Finance Act 1995 s 5(5), Sch 2 para 7). As to the Commissioners for Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 900 et seq. As to substitution of references to the Commissioners for references to the Commissioners of Customs and Excise see the Commissioners for Revenue and Customs Act 2005 s 50(1), (7).

6 As to the meaning of 'duty' see PARA 833 note 15.

7 Alcoholic Liquor Duties Act 1979 s 78(4) (as substituted: see note 5). A demand made for the purposes of s 78(4) must be combined, as if there had been a default such as is mentioned in that section, with an assessment and notification under the Finance Act 1994 s 12 (assessments to excise duty: see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1231) of the amount of duty due in consequence of the making of the demand: Alcoholic Liquor Duties Act 1979 s 78(7) (as so substituted).

8 Alcoholic Liquor Duties Act 1979 s 78(2) (as substituted: see note 5).

Halsbury's Laws of England/TRADE AND INDUSTRY (VOLUME 97 (2010) 5TH EDITION)/2. LEGISLATIVE CONTROLS/(2) EXCISE RESTRICTIONS/835. Inspection and examination of denatured alcohol.

835. Inspection and examination of denatured alcohol.

An officer of Revenue and Customs¹ may, in the daytime, enter and inspect the premises of any person authorised² to receive denatured alcohol³. He may inspect and examine any denatured alcohol on the premises and take samples of any denatured alcohol, or of any goods⁴ containing denatured alcohol, paying a reasonable price for each sample⁵.

1 As to the meaning of 'officer' see PARA 830 note 3; definition applied by the Alcoholic Liquor Duties Act 1979 s 4(3). As to substitution of references to officers of Revenue and Customs for references to officers of Customs and Excise see the Commissioners for Revenue and Customs Act 2005 ss 6(2), 50(2), (7). For the general powers of search of such officers see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1145 et seq.

2 ie by regulations under the Alcoholic Liquor Duties Act 1979 s 77: see PARA 833.

3 Alcoholic Liquor Duties Act 1979 s 79 (amended by the Finance Act 1995 s 5(5)-(7), Sch 2 para 5). As to the meaning of 'denatured alcohol' see PARA 832 note 4.

4 As to the meaning of 'goods' see PARA 808 note 6; definition applied by the Alcoholic Liquor Duties Act 1979 s 4(3).

5 Alcoholic Liquor Duties Act 1979 s 79 (as amended: see note 3). The powers conferred by s 79 are without prejudice to any other power conferred by the Customs and Excise Acts 1979 (as to which see PARA 808 note 1); Alcoholic Liquor Duties Act 1979 s 79. For the general power to take samples see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1146.

Halsbury's Laws of England/TRADE AND INDUSTRY (VOLUME 97 (2010) 5TH EDITION)/2. LEGISLATIVE CONTROLS/(2) EXCISE RESTRICTIONS/836. Prohibition of denatured alcohol as a beverage.

836. Prohibition of denatured alcohol as a beverage.

With certain exceptions¹ it is prohibited:

- 31 (1) to prepare, or attempt to prepare, any denatured alcohol², methyl alcohol or any mixture containing either of these liquors as a beverage or as a mixture with a beverage³;
- 32 (2) to sell any such liquor, whether so prepared or not, as a beverage or mixed with a beverage⁴;
- 33 (3) to use any such liquor or any derivative of it in the preparation of any article capable of being used wholly or partially as a beverage or internally as a medicine⁵;
- 34 (4) to sell or possess any such articles⁶ in the preparation of which any such liquor or any derivative of it has been used⁷; or
- 35 (5) except as permitted by the Commissioners for Revenue and Customs and in accordance with any conditions imposed by them, to purify or attempt to purify any such liquor or, after any such liquor has once been used, to recover or attempt to recover the spirit or alcohol contained in it by distillation or condensation or in any other manner⁸.

Any person committing such acts contrary to the above provisions is liable on summary conviction to a penalty, and the liquor in respect of which the offence was committed is liable to forfeiture⁹.

1 Nothing in these prohibitions affects the use of any denatured alcohol, methyl alcohol or mixtures containing denatured alcohol or methyl alcohol, or any derivative of those substances: (1) in the preparation for use as a medicine of sulphuric ether, chloroform or any other article which the Commissioners for Revenue and Customs may by order specify; or (2) in the making for external use only of any article sold or supplied in accordance with regulations made by the commissioners under the Alcoholic Liquor Duties Act 1979 s 77 (see PARA 833); or (3) in any art or manufacture: s 80(2)(a)-(c), (3) (s 80(3) amended by the Finance Act 1995 s 5(5)-(7), Sch 2 para 5). The prohibition does not affect the sale or possession of any article permitted to be prepared or made as stated in head (1) or head (2) above where the article is sold or possessed for use as mentioned in those heads: Alcoholic Liquor Duties Act 1979 s 80(2). As to the Commissioners for Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 900 et seq. As to substitution of references to the Commissioners for Revenue and Customs see the Commissioners for Revenue and Customs Act 2005 s 50(1), (7).

2 As to the meaning of 'denatured alcohol' see PARA 832 note 4.

3 Alcoholic Liquor Duties Act 1979 s 80(1)(a), (3) (s 80(3) as amended: see note 1).

4 Alcoholic Liquor Duties Act 1979 s 80(1)(b).

5 Alcoholic Liquor Duties Act 1979 s 80(1)(c).

6 Ie any article capable of being used wholly or partially as a beverage or internally as a medicine: Alcoholic Liquor Duties Act 1979 s 80(1)(c), (d).

7 Alcoholic Liquor Duties Act 1979 s 80(1)(d).

8 Alcoholic Liquor Duties Act 1979 s 80(1)(e).

9 Alcoholic Liquor Duties Act 1979 s 80(1). The penalty must not exceed level 3 on the standard scale: s 80(1) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

Halsbury's Laws of England/TRADE AND INDUSTRY (VOLUME 97 (2010) 5TH EDITION)/2. LEGISLATIVE CONTROLS/(2) EXCISE RESTRICTIONS/837. Petrol substitutes.

837. Petrol substitutes.

Where any person:

- 36 (1) puts to a chargeable use¹ any liquid² which is not hydrocarbon oil; and
- 37 (2) knows or has reasonable cause to believe that there is duty charged³ on that liquid which has not been paid and is not lawfully deferred,

his putting the liquid to that use attracts a penalty⁴, and any goods in respect of which any person contravenes this provision are liable to forfeiture⁵.

Likewise, where any person:

- 38 (a) puts any biodiesel⁶ or bioethanol⁷ to a chargeable use⁸; and
- 39 (b) knows or has reasonable cause to believe that there is duty charged⁹ on that biodiesel or bioethanol which has not been paid and is not lawfully deferred,

his putting the biodiesel or bioethanol to that use attracts a penalty¹⁰, and any goods in respect of which any person contravenes this provision are liable to forfeiture¹¹.

1 Ie within the meaning of the Hydrocarbon Oil Duties Act 1979 s 6A: see **CUSTOMS AND EXCISE** vol 12(2) (2007 Reissue) PARA 520.

2 For these purposes, 'liquid' does not include any substance which is gaseous at a temperature of 15° C and under a pressure of 1013.25 millibars: Hydrocarbon Oil Duties Act 1979 s 22(2).

3 Ie under the Hydrocarbon Oil Duties Act 1979 s 6A: see **CUSTOMS AND EXCISE** vol 12(2) (2007 Reissue) PARA 520.

4 Ie under the Finance Act 1994 s 9 (civil penalties): see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1218.

5 Hydrocarbon Oil Duties Act 1979 s 22(1) (amended by the Finance Act 1993 s 11(3); and the Finance Act 1994 s 9, Sch 4 para 56(1)). The Finance Act 1994 s 10 (exception for cases of reasonable excuse) (see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1218) does not apply in relation to conduct attracting a penalty by virtue of the Hydrocarbon Oil Duties Act 1979 s 22(1): s 22(1A) (added by the Finance Act 1994 s 9, Sch 4 para 56(2)).

6 As to the meaning of 'biodiesel' see the Hydrocarbon Oil Duties Act 1979 s 2AA; and **CUSTOMS AND EXCISE** vol 12(2) (2007 Reissue) PARA 516.

7 As to the meaning of 'bioethanol' see the Hydrocarbon Oil Duties Act 1979 s 2AB; and **CUSTOMS AND EXCISE** vol 12(2) (2007 Reissue) PARA 518.

8 Ie within the meaning of the Hydrocarbon Oil Duties Act 1979 s 6AA or 6AD: see **CUSTOMS AND EXCISE** vol 12(2) (2007 Reissue) PARAS 516, 518.

9 Ie under the Hydrocarbon Oil Duties Act 1979 s 6AA or 6AD: see **CUSTOMS AND EXCISE** vol 12(2) (2007 Reissue) PARAS 516, 518.

10 Ie under the Finance Act 1994 s 9 (civil penalties): see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1218.

11 Hydrocarbon Oil Duties Act 1979 s 22(1AA), (1AB) (added by the Finance Act 2002 s 5(5), Sch 2 paras 1, 5(7) and the Finance Act 2004 s 10(8)(a) respectively). The Finance Act 1994 s 10 (exception for cases of

reasonable excuse) (see **CUSTOMS AND EXCISE** vol 12(2) (2007 Reissue) PARA 1218) does not apply in relation to conduct attracting a penalty by virtue of the Hydrocarbon Oil Duties Act 1979 s 22(1AA), (1AB); s 22(1A) (as added (see note 5); amended by the Finance Act 2004 s 10(8)(b)).

Halsbury's Laws of England/TRADE AND INDUSTRY (VOLUME 97 (2010) 5TH EDITION)/2. LEGISLATIVE CONTROLS/(3) PARTICULAR TRADES/(i) In general/838. Miscellaneous restrictions.

(3) PARTICULAR TRADES

(i) In general

838. Miscellaneous restrictions.

Particular statutory restrictions, which are considered subsequently in this title, exist in respect of:

- 40 (1) shipbuilding and aircraft manufacture¹;
- 41 (2) dealing in scrap metal²;
- 42 (3) employment agencies³;
- 43 (4) hairdressers and barbers⁴; and
- 44 (5) the provision of security industry services⁵.

Particular restrictions (not considered in this title) also exist in relation to pyramid selling schemes⁶, acupuncturists and tattooists⁷, trading stamps⁸, certain offensive and dangerous trades⁹, motor salvage operators¹⁰ and vehicle registration plate suppliers¹¹.

There are a variety of restrictions, which are not considered in this title, governing the use of premises for certain trades and industries. In particular, such restrictions exist in relation to:

- 45 (a) pet shops¹²;
- 46 (b) bookmakers¹³;
- 47 (c) dairies¹⁴;
- 48 (d) slaughterhouses¹⁵;
- 49 (e) inns and hotels¹⁶;
- 50 (f) massage parlours and establishments for special treatment¹⁷;
- 51 (g) pharmaceutical chemists¹⁸;
- 52 (h) food premises¹⁹;
- 53 (i) mines and quarries²⁰; and
- 54 (j) cinemas, sex cinemas and sex shops²¹.

Examples of commercial activities which, though not considered in this title, are subject to control by licence include: (i) the manufacture of explosives²²; (ii) the manufacture, assembly, sale, supply, import or export of medicinal products²³; and (iii) street trading²⁴.

1 See PARAS 844 et seq, 862.

2 See PARA 863 et seq.

3 See PARA 881 et seq.

4 See PARA 873 et seq.

5 See PARA 887 et seq.

6 See **SALE OF GOODS AND SUPPLY OF SERVICES** vol 41 (2005 Reissue) PARA 853 et seq.

- 7 See **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 973.
- 8 See **VALUE ADDED TAX** vol 49(1) (2005 Reissue) PARA 213.
- 9 See eg **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1639 (petroleum and other inflammable substances), and **BUILDING** (celluloid and cinematograph film).
- 10 See **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 750.
- 11 See **ROAD TRAFFIC** vol 40(1) (2007 Reissue) PARA 522.
- 12 See **ANIMALS** vol 2 (2008) PARAS 936-937.
- 13 See **LICENSING AND GAMBLING** vol 67 (2008) PARA 53 et seq.
- 14 See **FOOD** vol 18(2) (Reissue) PARA 345 et seq.
- 15 See **FOOD** vol 18(2) (Reissue) PARA 470 et seq.
- 16 See **LICENSING AND GAMBLING** vol 67 (2008) PARA 183 et seq.
- 17 See **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 978.
- 18 See **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 888 et seq.
- 19 See generally **FOOD**.
- 20 See **MINES, MINERALS AND QUARRIES**.
- 21 See **LICENSING AND GAMBLING** vol 67 (2008) PARA 301 et seq.
- 22 See **EXPLOSIVES** vol 17(2) (Reissue) PARA 924 et seq.
- 23 See **MEDICINAL PRODUCTS AND DRUGS** vol 30(2) (Reissue) PARA 1 et seq.
- 24 See **MARKETS, FAIRS AND STREET TRADING**.

Halsbury's Laws of England/TRADE AND INDUSTRY (VOLUME 97 (2010) 5TH EDITION)/2. LEGISLATIVE CONTROLS/(3) PARTICULAR TRADES/(ii) The Iron and Steel Industry/839. Privatisation of the iron and steel industry: creation of British Steel plc.

(ii) The Iron and Steel Industry

839. Privatisation of the iron and steel industry: creation of British Steel plc.

After its initial nationalisation in 1949 and denationalisation in 1953¹, the iron and steel industry was largely renationalised in 1967 under the control of the British Steel Corporation². However, as from 5 September 1988³ all the property, rights and liabilities of the corporation became vested in British Steel plc⁴, the successor company nominated by the Secretary of State⁵ under the British Steel Act 1988⁶.

The company was wholly owned by the Crown on the appointed day, but provision was made for the issue and allotting of shares in it, with a view to it ceasing to be wholly owned by the Crown⁷. The Secretary of State was thereupon required to fix a target investment limit for government shareholding in the company; a new such limit may by order be fixed from time to time, provided that each new limit is lower than the one it replaces, and that no order may be revoked except by an order fixing a new limit⁸.

The British Steel Corporation continues to exist in order to carry out transitional functions⁹. When the Secretary of State is satisfied that nothing further remains to be done by the corporation under the transitional provisions he may, after consulting the corporation and British Steel plc, by order dissolve the corporation as from a day specified in the order¹⁰.

No information, and nothing contained in a forecast, obtained under the Iron and Steel Act 1982¹¹ or any of its predecessors¹² may be disclosed except by consent, or in summary form relating to a number of businesses, or for the institution or other purposes of criminal proceedings under the Act or its predecessors¹³. Disclosure in contravention of this prohibition is an offence punishable on summary conviction by imprisonment for up to three months or a fine not exceeding the statutory maximum, or both, and on conviction on indictment to imprisonment for up to two years or a fine, or both¹⁴. Where such an offence committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director¹⁵, manager, secretary or other similar officer of the body corporate, or any person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly¹⁶.

1 See the Iron and Steel Acts 1949 and 1953 (both repealed).

2 See the Iron and Steel Act 1967 (repealed). The former legislation was consolidated in the Iron and Steel Act 1982, which has been largely repealed by the British Steel Act 1988. See text and notes 3-10.

3 See the British Steel Act 1988 (Appointed Day) Order 1988, SI 1988/1375, made under the British Steel Act 1988 s 1(1). On the date mentioned in the text the repeal of most of the Iron and Steel Act 1982 came into force: British Steel Act 1988 s 16(3), Sch 2 Pt I. The full repeal of the Iron and Steel Act 1982 s 1 and Sch 1 will take effect as from the date of dissolution of the corporation (see text and notes 9-10); British Steel Act 1988 Sch 2 Pt II. After that date, the only provisions of the Iron and Steel Act 1982 remaining in force will be s 33 and s 34 (both amended by the British Steel Act 1988 Sch 2 Pt I) (disclosure of information, and offences relating thereto: see text and notes 11-16).

4 See the British Steel Act 1988 (Nominated Company) Order 1988, SI 1988/1376, made under the British Steel Act 1988 s 1(2) (repealed). For provisions relating to the financial structure of the company see s 7. The Secretary of State was empowered, before the company ceased to be wholly owned by the Crown, to make loans to the company: see s 8; see also s 9 (temporary restrictions on borrowings). On 6 October 1999, British

Steel plc merged with the Dutch company Koninklijke Hoogovens to become the Corus Group, which in turn became part of the Tata Steel Group (a subsidiary of the Tata Group of India) on 30 January 2007.

5 ie the Secretary of State for Business, Innovation and Skills. The expenses of the Secretary of State under the British Steel Act 1988 are payable out of money provided by Parliament: s 14. As to the Secretary of State see PARA 802.

6 British Steel Act 1988 s 1 (partly repealed by the Statute Law (Repeals) Act 2004); and see the British Steel Act 1988 Sch 1 for supplementary provisions relating to the vesting. Provision was made for the reduction and extinguishment of liabilities of the British Steel Corporation prior to the appointed day: see s 2 (repealed). Provision may be made for such amendment of enactments as may be necessary or expedient in connection with references to the corporation: s 16(2). Any order under the British Steel Act 1988 must be made by statutory instrument: s 13(1). Orders under s 6 or s 16(2) are subject to annulment in pursuance of a resolution of either House of Parliament: s 13(2). See **PARLIAMENT** vol 34 (Reissue) PARA 945.

7 See the British Steel Act 1988 ss 3, 4, 15(2) (s 3 partly repealed by the Statute Law (Repeals) Act 2004). Powers of the Secretary of State or the Treasury are exercisable by duly appointed nominees: British Steel Act 1988 s 5.

8 See the British Steel Act 1988 s 6(1)-(4). The target investment limit was fixed by the British Steel Act 1988 (Government Shareholding) Order 1989, SI 1989/824, at 0.0472% of the voting rights exercisable in all circumstances at general meetings of British Steel plc: see art 2. It is the duty of the Treasury and the Secretary of State to ensure that the government shareholding does not exceed that limit, but subject to this, the Treasury and Secretary of State may exercise their powers to take up rights available to them, or to direct their nominees to do so: British Steel Act 1988 s 6(5), (6). The temporary suspension of voting rights is disregarded: s 6(7). As to orders under s 6 see note 6.

Provision is made in relation to the liability of British Steel plc to corporation tax (see **INCOME TAXATION**): see the British Steel Act 1988 s 11 (amended by the Taxation of Chargeable Gains Act 1992 s 290, Sch 10 para 15; the Finance Act 1996 ss 104, 105, Sch 14 para 55; and the Corporation Tax Act 2009 s 1322, Sch 1 Pt 2 paras 328, 329).

9 British Steel Act 1988 s 10(1). As to the transitional functions see s 16(4), Sch 3 paras 2-12. The period from the appointed day (ie 5 September 1988: see text and notes 3-6) and the day specified as the day of dissolution is the transitional period: s 10(1).

10 British Steel Act 1988 s 10(2). As to the constitution and composition of the corporation, and other provisions relating to the performance of its functions see the Iron and Steel Act 1982 s 1, Sch 1 (prospectively repealed (see note 3); both amended, in relation to the transitional period, by the British Steel Act 1988 Sch 3 para 1).

11 See notes 2-3.

12 The predecessors of the Iron and Steel Act 1982 are the Iron and Steel Act 1949, the Iron and Steel Act 1953, the Iron and Steel Act 1967 and the Iron and Steel Act 1975: Iron and Steel Act 1982 s 33(4). See notes 1-2.

13 Iron and Steel Act 1982 s 33(1), (2) (amended by the British Steel Act 1988 Sch 2 Pt I).

14 Iron and Steel Act 1982 s 33(3). As to the statutory maximum see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 140.

15 In relation to the British Steel Corporation, or a body corporate established to carry on a nationalised industry and managed by its members, 'director' means a member of the corporation or body in question: Iron and Steel Act 1982 s 34(2).

16 Iron and Steel Act 1982 s 34(1) (amended by the British Steel Act 1988 Sch 2 Pt I).

Halsbury's Laws of England/TRADE AND INDUSTRY (VOLUME 97 (2010) 5TH EDITION)/2. LEGISLATIVE CONTROLS/(3) PARTICULAR TRADES/(iii) The Sugar Industry/840. Deregulation of the sugar industry.

(iii) The Sugar Industry

840. Deregulation of the sugar industry.

The sugar industry was formerly subject to considerable regulation by the Sugar Act 1956, which gave the Sugar Board¹ powers to buy sugar from abroad (pursuant to the Commonwealth Sugar Agreement²), and the British Sugar Corporation Ltd³ powers to buy domestically grown sugar beet. However, this statutory system of regulation was substantially repealed by the European Communities Act 1972 and the Agriculture (Miscellaneous Provisions) Act 1976⁴. The Sugar Board was dissolved on 15 February 1977⁵, and the corporation no longer exercises major statutory powers. There remains, as an exception, one area of statutory control, namely a ministerial reserve power to arrange the setting of the price in any year of home-grown beet⁶ in default of agreement between growers and processors⁷.

1 The Sugar Board was established by the Sugar Act 1956 s 1(1) (repealed).

2 The Commonwealth Sugar Agreement dated 21 December 1951 was made between the Minister of Food on behalf of the United Kingdom government and representatives of the sugar industries and exporters in Australia, the British West Indies, Fiji, Mauritius and the Union of South Africa: see the Sugar Act 1956 s 1(9), Sch 1 (repealed).

3 The British Sugar Corporation was originally formed under the Sugar Industry (Reorganisation) Act 1936 s 3 (repealed).

4 The major repeals were effected by the European Communities Act 1972 s 4(1), (2), Sch 3 Pt II, by a series of orders fixing appointed days for the repeals to come into effect, namely the Sugar Act 1956 (Repeals) (Appointed Day) Order (No 1), SI 1973/135; the Sugar Act 1956 (Repeals) (Appointed Day) Order (No 2), SI 1973/1019; the Sugar Act 1956 (Repeals) (Appointed Day) Order (No 3), SI 1975/1164; the Sugar Act 1956 (Repeals) (Appointed Day) Order (No 4), SI 1976/548; the Sugar Act 1956 (Repeals) (Appointed Day) Order (No 5), SI 1976/2016; and the Sugar Act 1956 (Repeals) (Appointed Day) Order (No 6), SI 1981/1192. The repeals contained in the Agriculture (Miscellaneous Provisions) Act 1976 Sch 4 Pt I were principally to dissolve the Sugar Board, and under s 27(4) came into effect with the coming into force on 15 February 1977 of the Sugar Board (Dissolution) Order 1977, SI 1977/224.

5 See the Agriculture (Miscellaneous Provisions) Act 1976 s 1(4) (repealed); and the Sugar Board (Dissolution) Order 1977, SI 1977/224, arts 1, 2 (lapsed). On 1 December 1976 the property, rights and liabilities of the Sugar Board became vested in the Minister of Agriculture, Fisheries and Food (now the Secretary of State for Environment, Food and Rural Affairs): Sugar Board (Transfer of Property etc) (Appointed Day) Order 1976, SI 1976/1963, art 2 (revoked).

6 As to the meaning of 'home-grown beet' see PARA 841 note 2.

7 See PARA 841.

Halsbury's Laws of England/TRADE AND INDUSTRY (VOLUME 97 (2010) 5TH EDITION)/2. LEGISLATIVE CONTROLS/(3) PARTICULAR TRADES/(iii) The Sugar Industry/841. Determination of price of home-grown beet.

841. Determination of price of home-grown beet.

If in any year it is made to appear to the ministers¹ by the processors of home-grown beet² or by a body which is in their opinion substantially representative of the growers of home-grown beet, that the processors and that body are unable to agree on the prices and other terms and conditions for the purchase of that home-grown beet by the processors, the ministers may determine (or designate a person to determine) those prices, terms and conditions³. Any purchase by processors for which prices, terms and conditions have been so determined, or a contract for such a purchase, takes effect as a purchase or contract at those prices and on those terms and conditions⁴.

For the purpose of facilitating:

- 55 (1) the making of such a determination as is described above; or
- 56 (2) the preparation or conduct of discussions concerning European Union (EU) arrangements for or relating to the regulation of the market for sugar⁵,

the appropriate minister⁶ may serve on any processor of home-grown beet a notice requiring him to furnish specified information in writing within a specified period⁷. Information so obtained may not be disclosed except with the previous written consent of the person who furnished it, and a person who contravenes this prohibition is liable on conviction on indictment to a fine or imprisonment for up to two years or both, or on summary conviction to a fine not exceeding the statutory maximum⁸ or imprisonment for up to three months or both⁹. However, this does not restrict:

- 57 (a) the disclosure of information to any of the ministers¹⁰; or
- 58 (b) the disclosure of information obtained under head (1) above to a person designated to make a determination as described above or to a body which substantially represents the growers of home-grown beet¹¹; or
- 59 (c) the disclosure of information obtained under head (2) above to the EU institution concerned¹².

1 'Ministers' means the Secretary of State for Environment, Food and Rural Affairs, the Secretary of State for Scotland and the Welsh Ministers, acting jointly: Food Act 1984 s 69(3) (amended by the Food Safety Act 1990 s 52(b), Sch 2 paras 12, 14; and by virtue of SI 1999/672 and the Government of Wales Act 2006 s 162, Sch 11 para 32). As to the Secretary of State for Environment, Food and Rural Affairs see **ANIMALS** vol 2 (2008) PARA 705; and as to the transfer of functions to the Welsh Ministers see PARA 802 note 21.

2 'Home-grown beet' means sugar beet grown in Great Britain: Food Act 1984 s 69(3) (definition added by SI 2003/1281). As to the meaning of 'Great Britain' see PARA 806 note 7.

3 Food Act 1984 s 69(1).

4 Food Act 1984 s 69(2).

5 As to the common organisation of the market in sugar see **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 711.

6 'Appropriate minister' means, in relation to England the Secretary of State for Environment, Food and Rural Affairs (see note 1), in relation to Scotland the Secretary of State and, in relation to Wales the Welsh Ministers:

Food Act 1984 s 69A(4) (s 69A added by the Food Safety Act 1990 Sch 2 para 15; definition amended by virtue of SI 1999/672 and the Government of Wales Act 2006 Sch 11 para 32).

- 7 Food Act 1984 s 69A(1) (as added: see note 6).
- 8 As to the statutory maximum see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 140.
- 9 Food Act 1984 s 69A(2) (as added: see note 6).
- 10 Food Act 1984 s 69A(3) (as added: see note 6).
- 11 Food Act 1984 s 69A(3)(a) (as added: see note 6).
- 12 Food Act 1984 s 69A(3)(b) (as added: see note 6).

Halsbury's Laws of England/TRADE AND INDUSTRY (VOLUME 97 (2010) 5TH EDITION)/2. LEGISLATIVE CONTROLS/(3) PARTICULAR TRADES/(iv) The Cinematograph Industry/842. Deregulation of the cinematograph industry.

(iv) The Cinematograph Industry

842. Deregulation of the cinematograph industry.

There was formerly in existence a system under which a statutory body, the British Film Fund Agency¹, was empowered to impose a levy on film exhibitors and to make payments out of the proceeds of the levy to another statutory body, the National Film Finance Corporation², and others, to provide finance for the production and distribution of films³. That system was discontinued by the Films Act 1985 and regulations made thereunder⁴, and the two statutory bodies were abolished⁵. The remaining statutory provisions relating to the cinematograph industry empower the Secretary of State to give financial assistance for the production of films⁶ and to make grants to the British Film Institute⁷.

1 The British Film Fund Agency was established by the Cinematograph Films Act 1957 s 1 (repealed) and continued by the Film Levy Finance Act 1981 s 1(1) (repealed).

2 The National Film Finance Corporation was established by the Cinematograph Film Production (Special Loans) Act 1949 (repealed) and continued by the National Film Finance Corporation Act 1981 s 1(1) (repealed).

3 This system was operated under the Film Levy Finance Act 1981 and the National Film Finance Corporation Act 1981 (both repealed). As to the licensing etc of cinemas and the showing of films see **LICENSING AND GAMBLING** vol 67 (2008) PARAS 26 et seq, 254 et seq.

4 See the Films Act 1985 s 2(4) (repealed); and the Films (Ending of Final Levy and Final Distribution Periods) Order 1985, SI 1985/811 (spent).

5 See the British Film Fund Agency (Dissolution) Order 1988, SI 1988/37 (lapsed); and the National Film Finance Corporation (Dissolution) Order 1985, SI 1985/1943 (lapsed).

6 See **LICENSING AND GAMBLING** vol 67 (2008) PARA 161.

7 See PARA 843.

Halsbury's Laws of England/TRADE AND INDUSTRY (VOLUME 97 (2010) 5TH EDITION)/2. LEGISLATIVE CONTROLS/(3) PARTICULAR TRADES/(iv) The Cinematograph Industry/843. Grants to the British Film Institute.

843. Grants to the British Film Institute.

The Treasury¹ may from time to time make grants to the British Film Institute² of such amounts as it thinks fit out of money provided by Parliament³.

1 This function of the Treasury is now exercisable by the Secretary of State for Culture, Media and Sport: see the Transfer of Functions (National Heritage) Order 1992, SI 1992/1311 (amended by SI 1997/1744).

2 The British Film Institute is a company incorporated for the purpose of encouraging the use and development of the cinematograph as a means of entertainment and instruction: see the Report of the Committee on the British Film Institute (1948) (Cmd 7361) para 3, App III.

3 British Film Institute Act 1949 s 1 (amended by the Sunday Cinema Act 1972 s 4, Schedule; and by SI 1992/1311). As to cinemas generally see **LICENSING AND GAMBLING** vol 67 (2008) PARA 254 et seq.

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(v) Shipbuilding

A. BRITISH SHIPBUILDERS

844. Constitution of British Shipbuilders.

In 1977, the greater part of the British shipbuilding industry was taken into public ownership, with the assets of the companies involved being vested in British Shipbuilders, a corporation established for that purpose¹. The corporation consists of a chairman and not less than two nor more than 20 members appointed by the Secretary of State² after consultation with the chairman³. Subject to the power of the Secretary of State to make regulations governing procedure⁴, the corporation may determine the arrangements relating to its meetings, and the validity of any of its proceedings is not affected by any vacancy among its members or in the office of chairman or by any defect in the appointment of a member⁵. The corporation is not the servant or agent of the Crown and does not enjoy any status, privilege or immunity of the Crown, nor is its property to be regarded as property of or held on behalf of the Crown⁶. The corporation must pay to its members such remuneration, allowances, pensions and compensation for loss of office as the Secretary of State may with the consent of the Treasury determine⁷.

Most of the assets of British Shipbuilders have now been privatised but it remains a public corporation responsible for commitments and liabilities arising from its former manufacture of ships and marine engines.

1 Aircraft and Shipbuilding Industries Act 1977 s 1(1)(b). As to the vesting of assets see PARAS 852-853. The Act also took into public ownership the companies engaged in the manufacture of aircraft, whose assets were vested in the other corporation established by the Act, British Aerospace: see s 1(1)(a) (repealed). This policy was, however, reversed in relation to aircraft by the British Aerospace Act 1980, which dissolved British Aerospace as from 31 December 1981: s 10(9); British Aerospace (Dissolution) Order 1981, SI 1981/1793, art 2. All references to the aircraft industry and British Aerospace in the Aircraft and Shipbuilding Industries Act 1977 are therefore repealed: British Aerospace Act 1980 ss 10(1), 15(2), Sch 3. See further PARA 862.

The Secretary of State may by order made by statutory instrument specify a different name for British Shipbuilders, in which case any reference to British Shipbuilders in any enactment, instrument or document must be construed accordingly: Aircraft and Shipbuilding Industries Act 1977 s 1(7) (amended by the British Aerospace Act 1980 Sch 3). This includes power to vary or revoke any such order previously made: Aircraft and Shipbuilding Industries Act 1977 s 1(8). Any such order is subject to annulment in pursuance of a resolution of either House of Parliament: s 1(8). See PARLIAMENT vol 34 (Reissue) PARA 945.

2 The Secretary of State is in practice the Secretary of State for Business, Innovation and Skills: see PARA 802.

3 Aircraft and Shipbuilding Industries Act 1977 s 1(2) (amended by SI 1991/1560). See also note 4.

4 The Secretary of State may by regulations made by statutory instrument: (1) substitute different minimum or maximum numbers of members; (2) establish offices other than that of chairman; (3) make provisions governing appointment and the tenure of and vacation of office by members; (4) make provision with respect to the disclosure of interests by members; (5) make provision concerning the quorum, proceedings and meetings of the corporation and the execution and proof of documents; and (6) make supplementary or incidental provisions: Aircraft and Shipbuilding Industries Act 1977 s 1(3)(a)-(f). Any such statutory instrument is subject to annulment in pursuance of a resolution of either House of Parliament: s 1(8). As to such regulations see the British Shipbuilders Regulations 1977, SI 1977/626 (amended by SI 1991/1560). The quorum of the corporation is set at the majority of members: reg 5(1) (as so amended). Members of the corporation are disqualified for membership of the House of Commons: see the House of Commons Disqualification Act 1975 s 1(1)(f), Sch 1 Pt

II (amended by, inter alia, the Aircraft and Shipbuilding Industries Act 1977 s 1(10)); and **PARLIAMENT** vol 78 (2010) PARA 905 et seq.

5 Aircraft and Shipbuilding Industries Act 1977 s 1(4).

6 Aircraft and Shipbuilding Industries Act 1977 s 1(6).

7 See the Aircraft and Shipbuilding Industries Act 1977 s 1(5); Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981, SI 1981/1670, art 2(2). As to the meaning of 'pension' for the purposes of the Aircraft and Shipbuilding Industries Act 1977 see PARA 858 note 3.

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LEGISLATIVE CONTROLS/(3) PARTICULAR TRADES/(v) Shipbuilding/A. BRITISH
SHIPBUILDERS/845. Activities of British Shipbuilders.

845. Activities of British Shipbuilders.

It is the duty of British Shipbuilders (referred to as the 'corporation') so to exercise its powers as to secure that the carrying on of the activities that have fallen to be carried on under its ultimate control is organised, so far as regards their direction, in the most efficient manner¹. The corporation must not make, or permit to be made, any substantial change in the manner in which the carrying on of the activities that have fallen to be carried on under its ultimate control is organised, so far as regards their direction, except with the consent of the Secretary of State².

After consultation with the corporation, the Secretary of State may by order³ give it directions:

- 60 (1) to discontinue or restrict any of its activities or to dispose of any of its property, rights and liabilities⁴; or
- 61 (2) to secure the discontinuance or restriction of any of the activities of a wholly owned subsidiary⁵ of the corporation or the disposal of all or any of its property, rights and liabilities or the winding up of any such subsidiary⁶.

However, he must not give any such direction unless he is satisfied that the giving of it will further the national interest⁷.

Any such direction to dispose or secure the disposal of property, rights or liabilities may in particular include a direction:

- 62 (a) to form a company for the purpose of acquiring the property or rights and assuming the liabilities to be transferred in pursuance of the direction⁸;
- 63 (b) prohibiting, except with the consent of the Secretary of State, the disposal to, or acquisition from any person by, any company which will acquire property or rights in pursuance of the direction of assets used or capable of use in the carrying on of activities of a description, or of activities other than activities of a description, specified in the direction⁹.

The exercise of these powers to direct the formation of a company and to restrict the disposal or acquisition of assets is restricted to the extent that: (i) no company may be directed to be formed otherwise than as a wholly owned subsidiary of the corporation¹⁰; and (ii) no such restriction is to be imposed except on a company which is, or when formed will be, a wholly owned subsidiary of the corporation, or is to be binding after it ceases to be such a subsidiary¹¹. So long as the restriction on the disposal or acquisition of assets is binding on the corporation or any of its wholly owned subsidiaries the statutory provisions relating to the capacity of the corporation or of the subsidiary have effect subject to the restriction¹².

Except in so far as it is satisfied that adequate machinery already exists, the corporation must consult any relevant trade union¹³ with a view to concluding agreements for the establishment and maintenance of machinery for certain purposes¹⁴, namely:

- 64 (A) the settlement by negotiation of terms and conditions of employment of persons employed by the corporation and its wholly owned subsidiaries¹⁵;
- 65 (B) the resolution of trade disputes¹⁶;

- 66 (c) the promotion and encouragement of measures affecting efficiency, in any respect, in the carrying on of their activities by the corporation and its wholly owned subsidiaries¹⁷; and
- 67 (d) the discussion of other matters of mutual interest¹⁸.

In each year¹⁹, after consulting any relevant trade union, the corporation must formulate a corporate plan relating to the conduct, during such period beginning in that year as it considers appropriate, of the operations of the corporation and its wholly owned subsidiaries²⁰. In formulating the plan and determining the period to which it is to relate, and in the general conduct of the operations of the corporation and its wholly owned subsidiaries in each year, the corporation must act on lines settled from time to time with the approval of the Secretary of State²¹.

In such manner and at such times as the Secretary of State may specify, the corporation must furnish him with such information as he may specify in writing, and as it can reasonably be expected to obtain, with respect to such matters relating to the corporation and its wholly owned subsidiaries, or the activities (past, present or future), plans or property of any of them as he may specify²². The Secretary of State may give directions²³ to the corporation requiring it to publish in the specified manner specified information relating to its operations and those of its wholly owned subsidiaries, and to its policy and plans for the general conduct of its undertaking and the business of all or any of its wholly owned subsidiaries²⁴.

1 Aircraft and Shipbuilding Industries Act 1977 s 4A(1) (ss 4A, 4B added by the British Shipbuilders Act 1983 s 2(1)).

2 Aircraft and Shipbuilding Industries Act 1977 s 4A(2) (as added: see note 1). As to the Secretary of State see PARA 844 note 2.

3 Any power to make orders under these provisions is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: Aircraft and Shipbuilding Industries Act 1977 s 4B(7) (as added: see note 1). See **PARLIAMENT** vol 34 (Reissue) PARA 945.

4 Aircraft and Shipbuilding Industries Act 1977 s 4B(1)(a) (as added: see note 1).

5 'Wholly owned subsidiary' and 'subsidiary' have the same meanings as they have for the purposes of the Companies Act 2006 s 1159 (see **COMPANIES** vol 14 (2009) PARA 25): Aircraft and Shipbuilding Industries Act 1977 s 56(1) (amended by the Companies Act 1989 s 144(4), Sch 18 para 16; and by SI 2009/1941).

6 Aircraft and Shipbuilding Industries Act 1977 s 4B(1)(b) (as added: see note 1).

7 Aircraft and Shipbuilding Industries Act 1977 s 4B(2) (as added: see note 1). This specific power of the Secretary of State is without prejudice to his power under s 4(2) (see PARA 846) to give directions of a general character to the corporation as to the exercise of its functions in relation to matters affecting the national interest: s 4B(1) (as so added).

Where he gives a direction under s 4B(1) which requires the disposal to an outside person of an interest in a company which is a wholly owned subsidiary of the corporation, or gives his consent to such a disposal under s 3(3) (see PARA 846), or s 9(3) (see PARA 847), then, after consultation with the corporation, the Secretary of State may by order give it directions to secure that: (1) the company's articles of association are altered in a specified manner; (2) the company's share capital is increased by a specified sum and in a specified manner and that any shares representing the whole or any part of that sum are issued to the Secretary of State or to his nominee; and (3) an employees' share scheme is established in respect of the company in specified terms and making specified provision: s 4B(6) (as so added). 'Outside person' means a person who is not a member of the group; the 'group' means British Shipbuilders and all its wholly owned subsidiaries taken together; and 'employees' share scheme' means a scheme for encouraging or facilitating the holding of shares or debentures in a company by or for the benefit of: (a) the bona fide employees or former employees of the company or of a subsidiary of the company, or (b) the wives, husbands, widows, widowers or children or stepchildren under 18 of such employees or former employees: s 4B(8) (as so added).

8 Aircraft and Shipbuilding Industries Act 1977 s 4B(3)(a) (as added: see note 1).

9 Aircraft and Shipbuilding Industries Act 1977 s 4B(3)(b) (as added: see note 1).

10 Aircraft and Shipbuilding Industries Act 1977 s 4B(4)(a) (as added: see note 1).

11 Aircraft and Shipbuilding Industries Act 1977 s 4B(4)(b) (as added: see note 1).

12 Aircraft and Shipbuilding Industries Act 1977 s 4B(5) (as added: see note 1).

13 'Relevant trade union' means any independent trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992 (see **EMPLOYMENT** vol 40 (2009) PARA 859), which the corporation or any of its wholly owned subsidiaries recognises for the purposes of collective bargaining within the meaning of that Act (see **EMPLOYMENT** vol 41 (2009) PARA 1042): Aircraft and Shipbuilding Industries Act 1977 s 56(1) (definition amended by the Employment Act 1980 s 20(3), Sch 2; and the Trade Union and Labour Relations (Consolidation) Act 1992 s 300(2), Sch 2 para 8(1), (3)).

14 Aircraft and Shipbuilding Industries Act 1977 s 6(1). This does not prohibit the corporation or its wholly owned subsidiaries from taking part together with other employers or organisations of employers in the establishment and maintenance of such machinery for any of the purposes listed: s 6(3).

15 Aircraft and Shipbuilding Industries Act 1977 s 6(2)(a).

16 Aircraft and Shipbuilding Industries Act 1977 s 6(2)(b) (amended by the Employment Act 1982 s 21, Sch 3 Pt II para 14; and the Trade Union and Labour Relations (Consolidation) Act 1992 Sch 2 para 8(1), (2)), which refers to trade disputes within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992 Pt IV (ss 178-218): see **EMPLOYMENT** vol 41 (2009) PARA 1181.

17 Aircraft and Shipbuilding Industries Act 1977 s 6(2)(c).

18 Aircraft and Shipbuilding Industries Act 1977 s 6(2)(d).

19 'Year' means the period of 12 months beginning on 1 January: Aircraft and Shipbuilding Industries Act 1977 s 7(4).

20 Aircraft and Shipbuilding Industries Act 1977 s 7(1). The plan must deal with: (1) capital investment; (2) research and development; (3) employment of persons; (4) forecasts of income and expenditure on profit and loss account and of payments and receipts of the corporation and its wholly owned subsidiaries; (5) such other matters as the corporation considers appropriate; and (6) such other matters as the Secretary of State may specify in writing to the corporation: s 7(1)(a)-(f). However, if the Secretary of State so directs, the plan for any year need not deal with such of the matters in heads (1)-(4) as are specified in the direction: s 7(2).

21 Aircraft and Shipbuilding Industries Act 1977 s 7(1).

22 Aircraft and Shipbuilding Industries Act 1977 s 8(1).

23 Before giving any such directions the Secretary of State must consult the corporation: Aircraft and Shipbuilding Industries Act 1977 s 8(3).

24 Aircraft and Shipbuilding Industries Act 1977 s 8(2).

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SHIPBUILDERS/846. Powers of British Shipbuilders.

846. Powers of British Shipbuilders.

British Shipbuilders¹ has power to carry on the following activities:

- 68 (1) the design, development, production, sale, repair and maintenance of ships and slow speed diesel marine engines²;
- 69 (2) research into related matters³;
- 70 (3) any activities which were carried on immediately before the date of transfer⁴ by a company which, by virtue of the Aircraft and Shipbuilding Industries Act 1977, became a wholly owned subsidiary⁵ of the corporation⁶; and
- 71 (4) with the consent of the Secretary of State⁷, or in accordance with any general authority given by him, any other activities to which the consent or authority relates⁸.

The corporation may also promote the carrying on of any of these activities to such extent as it thinks fit by other persons none of whom need be its wholly owned subsidiary⁹.

Except with the consent of the Secretary of State or in accordance with the terms of any general authority given by him¹⁰, the corporation may not: (a) acquire by agreement and hold interests in other bodies corporate¹¹; (b) form or take part in forming bodies corporate¹²; (c) enter into partnerships¹³; or (d) dispose of an interest in any of its wholly owned subsidiaries¹⁴. The corporation has power to exercise all rights conferred by the holding of interests in bodies corporate¹⁵.

The corporation may, with the consent of the Secretary of State, promote or, without such consent, oppose Bills in Parliament¹⁶. The corporation has a general power to do anything or enter into any transaction (whether or not involving the expenditure, borrowing or lending of money, or the acquisition or disposal of any property or rights) which in its opinion is calculated to facilitate the exercise or performance of any of its statutory functions or which is in its opinion incidental or conducive to such exercise or performance¹⁷.

The above provisions¹⁸ relate only to the capacity of the corporation as a statutory corporation, and do not authorise the disregard by the corporation of any enactment or rule of law¹⁹.

In addition to his power to add to or alter the functions of the corporation or lay down objectives and conditions²⁰, the Secretary of State has power to give directions of a general character as to the exercise and performance by the corporation of its functions (including the exercise of rights conferred by the holding of interests in bodies corporate, whether or not incorporated in the United Kingdom) in relation to matters appearing to him to affect the national interest²¹. The corporation must give effect to any such direction, and so far as appropriate must secure that each of its wholly owned subsidiaries also does so²².

1 As to British Shipbuilders see PARA 844.

2 Aircraft and Shipbuilding Industries Act 1977 s 3(1)(a) (s 3(1) substituted by the British Shipbuilders Act 1983 s 1(3)).

3 Aircraft and Shipbuilding Industries Act 1977 s 3(1)(b) (as substituted: see note 2).

4 Ie 1 July 1977: see PARA 850.

- 5 As to the meaning of 'wholly owned subsidiary' see PARA 845 note 5.
- 6 Aircraft and Shipbuilding Industries Act 1977 s 3(1)(c) (as substituted: see note 2).
- 7 As to the Secretary of State see PARA 844 note 2.
- 8 Aircraft and Shipbuilding Industries Act 1977 s 3(1)(d) (as substituted: see note 2).
- 9 Aircraft and Shipbuilding Industries Act 1977 s 3(1) (as substituted: see note 2).
- 10 See the Aircraft and Shipbuilding Industries Act 1977 s 3(3)(a).
- 11 Aircraft and Shipbuilding Industries Act 1977 s 3(2)(a), (3)(a). This power, and those referred to in the text to notes 12, 15, is exercisable in relation to bodies corporate whether or not they are or will be incorporated in the United Kingdom: s 3(4). As to the meaning of 'United Kingdom' see PARA 806 note 7.
- 12 Aircraft and Shipbuilding Industries Act 1977 s 3(2)(b), (3)(a). See also note 11.
- 13 Aircraft and Shipbuilding Industries Act 1977 s 3(2)(c), (3)(a). This power is exercisable in relation to a partnership whether or not the partnership will be governed by the law of any part of the United Kingdom: s 3(4). As to the law of partnership generally see **PARTNERSHIP**.
- 14 Aircraft and Shipbuilding Industries Act 1977 s 3(3)(b). However, disposal to another wholly owned subsidiary requires neither consent nor authorisation: s 3(3)(b).
- 15 Aircraft and Shipbuilding Industries Act 1977 s 3(2)(d). See also note 11.
- 16 Aircraft and Shipbuilding Industries Act 1977 s 3(7).
- 17 Aircraft and Shipbuilding Industries Act 1977 s 3(8).
- 18 See the Aircraft and Shipbuilding Industries Act 1977 s 3(1)-(8).
- 19 Aircraft and Shipbuilding Industries Act 1977 s 3(9).
- 20 See PARA 845.
- 21 Aircraft and Shipbuilding Industries Act 1977 s 4(2). Before giving such directions he must:
 - 22 (1) consider all factors relating to the corporation that appear to him to be relevant (s 4(3)(a));
 - 23 (2) consult the corporation (s 4(3)(b)); and
 - 24 (3) have full regard to the need:
 1. (a) to co-ordinate the corporation's operations with those of the British shipping industry (s 4(4)(a));
 2. (b) to take account of any shipbuilding policy for the time being adopted by any international organisation of which the United Kingdom is a member (s 4(4)(b));
 3. (c) to ensure that the corporation is able to compete in world markets on equal terms with its competitors in other countries (s 4(4)(c)); and
 4. (d) to take account of any special considerations relating to parts of the United Kingdom, and in particular to those relating to employment (s 4(4)(d)).

When he gives a direction the Secretary of State must lay a copy before each House of Parliament within 28 days, unless he has notified the corporation that in his opinion this would be contrary to the national interest or he accepts the corporation's contention that it would be against the corporation's commercial interests: s 4(5). Such a notice may be revoked by notice to the corporation: see s 18(3); and PARA 851 text and note 12.

- 22 Aircraft and Shipbuilding Industries Act 1977 s 4(1).

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847. Control by British Shipbuilders of its wholly owned subsidiaries.

British Shipbuilders¹ must secure that, notwithstanding anything in the articles of association of any of its wholly owned subsidiaries², none of those subsidiaries:

- 72 (1) carries on any activity which the corporation itself has no power to carry on or has power to carry on only with the consent of the Secretary of State³;
- 73 (2) acquires any interest in a body corporate or forms or takes part in forming a body corporate⁴; or
- 74 (3) enters into a partnership with any other person except with the consent of, or in accordance with the terms of any general authority given by, the Secretary of State⁵.

The corporation must secure that, except with the consent of, or in accordance with the terms of any general authority given by, the Secretary of State, none of its wholly owned subsidiaries disposes of an interest in any other of its wholly owned subsidiaries, unless the disposal is to the corporation itself or to another of its wholly owned subsidiaries⁶.

It is the duty of the corporation to secure that none of its wholly owned subsidiaries borrows otherwise than from the corporation or from another such subsidiary except with the consent of the Secretary of State and the approval of the Treasury⁷.

1 As to British Shipbuilders see PARA 844.

2 See the Aircraft and Shipbuilding Industries Act 1977 s 9(1) (amended by SI 2009/1941). As to the meaning of 'wholly owned subsidiary' see PARA 845 note 5.

3 Aircraft and Shipbuilding Industries Act 1977 s 9(1)(a). As to the activities and powers of the corporation see PARAS 845-846. As to the Secretary of State see PARA 844 note 2.

4 Aircraft and Shipbuilding Industries Act 1977 s 9(1)(b). This applies whether or not the body corporate is or will be incorporated in the United Kingdom: s 9(2). As to the meaning of 'United Kingdom' see PARA 806 note 7.

5 Aircraft and Shipbuilding Industries Act 1977 s 9(1)(c). This applies whether or not the partnership will be governed by the law of any part of the United Kingdom: s 9(2).

6 Aircraft and Shipbuilding Industries Act 1977 s 9(3).

7 Aircraft and Shipbuilding Industries Act 1977 s 11(5). As to borrowings generally see PARA 849.

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LEGISLATIVE CONTROLS/(3) PARTICULAR TRADES/(v) Shipbuilding/A. BRITISH
SHIPBUILDERS/848. Financial duties.

848. Financial duties.

The financial duties of British Shipbuilders¹ are determined from time to time by the Secretary of State² with the approval of the Treasury and after consultation with the corporation³. Such a determination may relate to a period beginning before the date on which it was made and may contain incidental or supplemental provisions⁴. The Secretary of State and the Treasury must be satisfied that the duties laid upon the corporation by the determination are likely, taken together, to result in an adequate return on the capital employed by the corporation and its subsidiaries⁵. Each report⁶ of the corporation for any accounting year⁷ must set out any such determination, other than one which was wholly superseded before the beginning of the accounting year to which the report relates⁸.

1 As to British Shipbuilders see PARA 844.

2 As to the Secretary of State see PARA 844 note 2.

3 Aircraft and Shipbuilding Industries Act 1977 s 10(1). The Secretary of State must give notice of any such determination to the corporation as soon as possible after it is made (s 10(3)), and must as soon as possible lay a copy of it before each House of Parliament (s 10(7)).

4 Aircraft and Shipbuilding Industries Act 1977 s 10(6).

5 Aircraft and Shipbuilding Industries Act 1977 s 10(5). As to the meaning of 'subsidiary' see PARA 845 note 5.

6 As to the annual report for the accounting year of the corporation see the Aircraft and Shipbuilding Industries Act 1977 s 18; and PARA 851.

7 As to the accounting year of the corporation see the Aircraft and Shipbuilding Industries Act 1977 ss 17(5), (6), 56(1); and PARA 851.

8 Aircraft and Shipbuilding Industries Act 1977 s 10(4).

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SHIPBUILDERS/849. Borrowings by, and loans to, British Shipbuilders.

849. Borrowings by, and loans to, British Shipbuilders.

British Shipbuilders¹ may borrow money in accordance with the following provisions². The corporation may borrow temporarily, by way of overdraft or otherwise:

- 75 (1) from the Secretary of State in sterling; or
- 76 (2) with his consent and the approval of the Treasury, or in accordance with a general authority given by the Secretary of State with the approval of the Treasury, in sterling or some other currency from some other person,

such sums as may be required for meeting the obligations and discharging the functions of the corporation or its wholly owned subsidiaries³.

The corporation may borrow, otherwise than by way of temporary loan:

- 77 (a) from the Secretary of State in sterling; or
- 78 (b) with his consent and the approval of the Treasury, in sterling from the Commission of the European Union or the European Investment Bank⁴ or in any other currency from a person other than the Secretary of State,

such sums as may be required by the corporation or any of its wholly owned subsidiaries for capital purposes or for fulfilling any guarantee entered into by it⁵.

The corporation may borrow from any of its wholly owned subsidiaries without any consent, approval or other authority⁶.

The aggregate of: (i) the amounts outstanding otherwise than by way of interest, in respect of money borrowed by the corporation and its wholly owned subsidiaries (other than money borrowed on excluded loans⁷); and (ii) the public dividend capital received by the corporation, must not exceed £1,700 million⁸, but the Secretary of State may, with the consent of the Treasury, by order⁹ increase or further increase that limit, but not beyond £1,800 million¹⁰.

The Secretary of State may¹¹, with the approval of the Treasury, lend to the corporation any sums which it has power to borrow from him under the provisions described above¹², and the Treasury may issue to him out of the National Loans Fund¹³ any sums necessary to enable him to make such loans¹⁴. Any such loans must be repaid to the Secretary of State at such times and by such methods, and interest paid at such times and rates, as he may, with the approval of the Treasury, from time to time direct¹⁵. The Secretary of State must prepare in respect of each financial year an account¹⁶ of the sums issued to him by the Treasury to enable him to make loans and his disposal of those sums, and of the public dividend capital¹⁷ received and the public dividend¹⁸ paid by the corporation¹⁹. The Secretary of State must send the account to the Comptroller and Auditor General before the end of November next following the end of the financial year to which it relates; the Comptroller and Auditor General must examine, certify and report on each of the accounts and lay copies of it and his report before each House of Parliament²⁰.

The Treasury may guarantee, in such manner and on such conditions as it thinks fit, the repayment of the principal of, the payment of interest on, and the discharge of any other financial obligation in connection with, any sums borrowed by the corporation from any person

other than the Secretary of State²¹. Immediately after such a guarantee is given, the Treasury must lay a statement of it before each House of Parliament²². Any sum required by the Treasury for fulfilling the guarantee is charged on and issued out of the Consolidated Fund²³. Where any sum is issued, the Treasury must lay a statement relating to that sum before each House of Parliament, as soon as possible after the end of each financial year beginning with the year in which the sum is issued and ending with the year in which all liability in respect of the principal sum and the interest on it is discharged²⁴. If any sums are issued by the Treasury in fulfilment of a guarantee, the corporation must make to the Treasury, at such times and in such manner as the Treasury may from time to time direct, payments of such amounts as the Treasury directs in or towards repayment of the sums issued, and of interest at such rate as the Treasury directs on what is for the time being outstanding in respect of the sums issued²⁵.

1 As to British Shipbuilders see PARA 844.

2 Aircraft and Shipbuilding Industries Act 1977 s 11(1).

3 Aircraft and Shipbuilding Industries Act 1977 s 11(2). As to the meaning of 'wholly owned subsidiary' see PARA 845 note 5. As to the Secretary of State see PARA 844 note 2.

4 As to the European Investment Bank see **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 304 et seq.

5 Aircraft and Shipbuilding Industries Act 1977 s 11(3).

6 Aircraft and Shipbuilding Industries Act 1977 s 11(4).

7 A loan is an excluded loan for this purpose if:

25 (1) it consists of money borrowed by the corporation from one of its wholly owned subsidiaries, or by one such subsidiary from another (Aircraft and Shipbuilding Industries Act 1977 s 11(9)(a));

26 (2) it is a loan under what is now the Industrial Development Act 1982 s 7 or s 8 (assistance for industry) (see PARAS 940-943) (Aircraft and Shipbuilding Industries Act 1977 s 11(9)(b) (amended by the British Aerospace Act 1980 s 15(2), Sch 3));

27 (3) it is a loan guaranteed under the Industry Act 1972 s 10 (construction credits for ships) (see PARA 861) (Aircraft and Shipbuilding Industries Act 1977 s 11(9)(c));

28 (4) the purpose of the loan is to pay off the whole or part of the commencing debt of the corporation (see s 15; and PARA 850) (s 11(9)(d)); or

29 (5) the purpose of the loan is to pay off a previous loan which was an excluded loan by virtue of head (4) (s 11(9)(e)).

8 The limit was increased from £1,550 million by the British Shipbuilders Borrowing Powers (Increase of Limit) Order 1988, SI 1988/1401, art 2.

9 The power to make such an order includes power to vary or revoke any previous such order; a draft of any order must be laid before and approved by the House of Commons: Aircraft and Shipbuilding Industries Act 1977 s 11(10) (amended by the British Aerospace Act 1980 Sch 3). Such an order may increase or further increase the limit by any sum not exceeding £150 million: Aircraft and Shipbuilding Industries Act 1977 s 11(7) (amended by the British Shipbuilders (Borrowing Powers) Act 1987 s 1(1)).

10 Aircraft and Shipbuilding Industries Act 1977 s 11(7) (amended by the British Shipbuilders (Borrowing Powers) Act 1983 s 1(1); the British Shipbuilders (Borrowing Powers) Act 1987 s 1(1); and SI 1988/1401 (see note 8)). No part of the commencing capital of the corporation is taken into account under this provision: Aircraft and Shipbuilding Industries Act 1977 s 11(8) (amended by the British Aerospace Act 1980 Sch 3). As to the commencing capital of the corporation see PARA 850.

11 This is without prejudice to his powers under any other enactment: Aircraft and Shipbuilding Industries Act 1977 s 12(1).

12 le under the Aircraft and Shipbuilding Industries Act 1977 s 11: see text and notes 1-10.

- 13 As to the National Loans Fund see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 727 et seq.
- 14 Aircraft and Shipbuilding Industries Act 1977 s 12(1).
- 15 Aircraft and Shipbuilding Industries Act 1977 s 12(2). Any such sums received by the Secretary of State must be paid into the National Loans Fund: s 12(3).
- 16 The form of the accounts and the manner of preparing them must be such as the Treasury may direct: Aircraft and Shipbuilding Industries Act 1977 s 12(6).
- 17 As to the meaning of 'public dividend capital' see PARA 850.
- 18 As to the meaning of 'public dividend' see PARA 850.
- 19 Aircraft and Shipbuilding Industries Act 1977 s 12(4) (amended by the Statute Law (Repeals) Act 2004).
- 20 Aircraft and Shipbuilding Industries Act 1977 s 12(5). As to the Comptroller and Auditor General see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 724-726.
- 21 Aircraft and Shipbuilding Industries Act 1977 s 13(1) (amended by the Miscellaneous Financial Provisions Act 1983 s 4, Sch 2).
- 22 Aircraft and Shipbuilding Industries Act 1977 s 13(2).
- 23 Aircraft and Shipbuilding Industries Act 1977 s 13(3). As to the Consolidated Fund see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 711 et seq; **PARLIAMENT** vol 78 (2010) PARA 1028 et seq.
- 24 Aircraft and Shipbuilding Industries Act 1977 s 13(2).
- 25 Aircraft and Shipbuilding Industries Act 1977 s 13(4). Any such sums received by the Treasury must be paid into the Consolidated Fund: s 13(5).

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850. Rights and obligations transferred to British Shipbuilders.

On 1 July 1977¹ the rights and obligations of the Secretary of State with respect to certain government loans² to companies which came into public ownership on that date³ were transferred to British Shipbuilders⁴. The Secretary of State, with the approval of the Treasury, was required to prescribe a commencing capital for the corporation, and the division of the commencing capital between commencing debt and public dividend capital⁵.

The Secretary of State may⁶, with the approval of the Treasury, pay to the corporation such sums, known as public dividend capital, as he thinks fit⁷. In consideration of receiving such sums the corporation must make payments, known as public dividends, to the Secretary of State⁸. In each accounting year⁹ the corporation must decide whether or not to propose to the Secretary of State to pay any public dividend, and if so, the amount it proposes to pay¹⁰. If it makes such a proposal which is agreed by the Secretary of State with the consent of the Treasury, the corporation must pay the public dividend proposed for that year¹¹. If no proposal is made or agreed the corporation must pay a public dividend of such amount as the Secretary of State may determine, with the consent of the Treasury and after consultation with the corporation¹².

1 Ie the shipbuilding industry vesting date: see the Aircraft and Shipbuilding Industries Act 1977 ss 19(2), 56(1); the Aircraft and Shipbuilding Industries (Shipbuilding Industry Vesting Date) Order 1977, SI 1977/540, art 1; and PARA 852.

2 As to the loans in question see the Aircraft and Shipbuilding Industries Act 1977 s 14(3) (amended by the British Aerospace Act 1980 s 15(2), Sch 3).

3 As to these companies see PARA 852 note 3.

4 Aircraft and Shipbuilding Industries Act 1977 s 14(2). As to British Shipbuilders see PARA 844.

5 Aircraft and Shipbuilding Industries Act 1977 s 15(1)-(3) (s 15(2) amended by the British Aerospace Act 1980 Sch 3). The Secretary of State was empowered from time to time to determine the terms for paying off the commencing debt of the corporation, and obliged to pay sums received by way of repayment or interest into the National Loans Fund (see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 727 et seq): Aircraft and Shipbuilding Industries Act 1977 s 15(4), (5). As to the Secretary of State see PARA 844 note 2.

6 This is subject to the provisions of the Aircraft and Shipbuilding Industries Act 1977 s 11: see PARA 849.

7 Aircraft and Shipbuilding Industries Act 1977 s 16(1). Sums required by the Secretary at State for payments of public dividend capital are defrayed out of money provided by Parliament: s 16(6).

8 Aircraft and Shipbuilding Industries Act 1977 s 16(2).

9 As to the accounting year of the corporation see the Aircraft and Shipbuilding Industries Act 1977 ss 17(5), (6), 56(1); and PARA 851.

10 Aircraft and Shipbuilding Industries Act 1977 s 16(3). Any public dividends received by the Secretary of State must be paid into the Consolidated Fund: s 16(6). As to the Consolidated Fund see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 711 et seq; **PARLIAMENT** vol 78 (2010) PARA 1028 et seq.

11 Aircraft and Shipbuilding Industries Act 1977 s 16(4).

12 Aircraft and Shipbuilding Industries Act 1977 s 16(5).

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LEGISLATIVE CONTROLS/(3) PARTICULAR TRADES/(v) Shipbuilding/A. BRITISH
SHIPBUILDERS/851. Accounts, audits and reports.

851. Accounts, audits and reports.

British Shipbuilders¹ must:

- 79 (1) keep proper accounts and proper records in relation to them²;
- 80 (2) prepare in respect of each accounting year³ a statement of accounts⁴ giving a true and fair view of the state of affairs and profit or loss of the corporation⁵; and
- 81 (3) prepare in respect of each accounting year such a statement or statements of consolidated accounts dealing with, and giving a true and fair view of the state of affairs and profit or loss of, the corporation and all of its subsidiary undertakings⁶ (the 'group'), or some (but not all) members of the group as the corporation may determine and the Secretary of State and the Treasury may for the time being approve⁷.

The accounts kept, and all statements prepared by, the corporation, must be audited by auditors appointed for each accounting year by the Secretary of State⁸. As soon as they have been audited the corporation must send to the Secretary of State:

- 82 (a) a copy of the statements;
- 83 (b) copies of the statements of accounts for such of its subsidiary undertakings as the corporation may determine with the approval of the Secretary of State and the consent of the Treasury; and
- 84 (c) if the Secretary of State, with the consent of the Treasury, so requires by notice in writing, copies of the statements of accounts for each subsidiary undertaking which is specified in the notice,

together with a copy of any report made by the auditors on the statements or on the accounts of the corporation; and the Secretary of State must lay a copy of every statement and report of which a copy is received by him before each House of Parliament⁹.

The corporation must make to the Secretary of State, as soon as possible after the end of each accounting year, a report on the corporation's operations and those of its wholly owned subsidiaries¹⁰ during that year¹¹. The report must set out any direction given to the corporation during that year by the Secretary of State, unless the Secretary of State has given (and not revoked) a notice that laying it before Parliament would be against the national interest¹². The report must also set out any consent given to it for the change of its activities¹³, and include a general account of the changes in organisation made during the year in consequence of a consent given in that or any other accounting year¹⁴. The Secretary of State must lay a copy of every report made to him under the provisions described above before each House of Parliament¹⁵.

1 As to British Shipbuilders see PARA 844.

2 Aircraft and Shipbuilding Industries Act 1977 s 17(1)(a).

3 The Secretary of State was required to direct a period as the first accounting year of the corporation; subsequent accounting years are successive periods of 12 months, following the first period: Aircraft and

Shipbuilding Industries Act 1977 s 17(5). The Secretary of State may direct an alternative finishing date for any accounting year: s 17(6). As to the Secretary of State see PARA 844 note 2.

4 Every statement of accounts required to be prepared by the corporation must comply with any requirement notified to the corporation in writing by the Secretary of State, with the consent of the Treasury, in relation to: (1) the information to be contained in the statement; (2) the manner in which the information is to be presented; and (3) the methods and principles according to which it must be prepared: Aircraft and Shipbuilding Industries Act 1977 s 17(3). Subject to any such requirement, in preparing any such statement the corporation must follow, with respect to any matter specified in heads (1) to (3) above, such course as may for the time being be approved by the Secretary of State with the consent of the Treasury: s 17(4).

5 Aircraft and Shipbuilding Industries Act 1977 s 17(1)(b).

6 'Subsidiary undertaking' has the same meaning as in the Companies Act 2006 s 1162, Sch 7 (see COMPANIES vol 14 (2009) PARA 26): Aircraft and Shipbuilding Industries Act 1977 s 17(10) (added by the Companies Act 1989 Sch 10 para 28(1), (4); and amended by SI 2008/948).

7 Aircraft and Shipbuilding Industries Act 1977 s 17(1)(c) (amended by the Companies Act 1989 s 23, Sch 10 para 28(1), (2)). If the Secretary of State, with the consent of the Treasury, so requires by notice in writing, the corporation must, in respect of any accounting year to which the notice relates, comply with this obligation by preparing a statement of consolidated accounts dealing with the specified members of the group and giving a true and fair view of their state of affairs and profit or loss: Aircraft and Shipbuilding Industries Act 1977 s 17(2).

8 Aircraft and Shipbuilding Industries Act 1977 s 17(7). A person must not be appointed unless he is eligible for appointment as a statutory auditor under the Companies Act 2006 Pt 42 (ss 1209-1264) (see COMPANIES vol 15 (2009) PARA 958): Aircraft and Shipbuilding Industries Act 1977 s 17(8) (substituted by SI 1991/1997; and amended by SI 2008/948).

9 Aircraft and Shipbuilding Industries Act 1977 s 17(9) (amended by the Companies Act 1989 Sch 10 para 28(1), (3)).

10 As to the meaning of 'wholly owned subsidiary' see PARA 845 note 5.

11 Aircraft and Shipbuilding Industries Act 1977 s 18(1).

12 Aircraft and Shipbuilding Industries Act 1977 s 18(2). As to the notices referred to see s 4(5); and PARA 846 note 21. Such notices may be revoked by notice to the corporation: s 18(3).

13 As to such consent see the Aircraft and Shipbuilding Industries Act 1977 s 4A(2); and PARA 845 text and note 2.

14 Aircraft and Shipbuilding Industries Act 1977 s 18(3A) (added by the British Shipbuilders Act 1983 s 2(3)).

15 Aircraft and Shipbuilding Industries Act 1977 s 18(6).

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LEGISLATIVE CONTROLS/(3) PARTICULAR TRADES/(v) Shipbuilding/B. VESTING OF ASSETS/852. Acquisition of securities and assets.

B. VESTING OF ASSETS

852. Acquisition of securities and assets.

On 1 July 1977¹ the securities² of specified companies in the shipbuilding industry³ (other than excepted companies⁴) vested in British Shipbuilders⁵, and the corporation succeeded at once, without the normal formalities of transfer, to all the rights and liabilities attached to those securities⁶.

Provision consequent upon that vesting was made for:

- 85 (1) the transfer of rights and liabilities where a company acquired by the corporation was the wholly owned subsidiary⁷ of another company which was not so acquired, and for the transfer of rights and liabilities under agreements for the rendering of personal services⁸;
- 86 (2) inter-company debts owed by an acquired company to an associated person⁹ to be treated as securities¹⁰;
- 87 (3) the cancellation of any rights of third persons to acquire securities in, or to appoint or be appointed as director of, a company which came into public ownership¹¹;
- 88 (4) the limitation of payments of interest and of dividends during a specified period ending with the vesting date, and the repayment of amounts paid in excess of the limits specified¹²;
- 89 (5) the addition of further companies to those taken into public ownership, and the removal of any company from those which were to be acquired¹³;
- 90 (6) the prevention of transfer, before the vesting date, of rights in relation to any works¹⁴, the recovery of assets transferred by an acquired company before the vesting date to a body which was not to be taken into public ownership¹⁵, and measures to be taken where assets of a company to be acquired were dissipated by the company before the vesting date¹⁶;
- 91 (7) the measures to be taken by the corporation in respect of unreasonable or onerous transactions entered into by a company before the vesting date¹⁷;
- 92 (8) approvals which the Secretary of State might give to certain transactions otherwise prohibited¹⁸; and
- 93 (9) the furnishing of specified information to persons authorised by the Secretary of State, and the restriction of disclosure of information so furnished¹⁹.

1 Ie the shipbuilding industry vesting date: see PARA 850 note 1.

2 'Securities' in relation to a company means any shares, debentures, debenture stock, loan stock, income notes, income stock, funding certificates and securities of a like nature: Aircraft and Shipbuilding Industries Act 1977 s 56(1). However, under s 19(5) certain securities forming part of the loan capital of the company were excepted.

3 The companies taken into public ownership are listed in the Aircraft and Shipbuilding Industries Act 1977 Sch 2 Pt I, under the headings 'shipbuilding companies', 'companies manufacturing slow speed diesel marine engines' and 'training companies'. The Secretary of State was empowered to add or remove companies from the list at the time of vesting in certain circumstances, and there were provisions safeguarding the assets of companies to be acquired: see ss 26-34 (repealed by the Statute Law (Repeals) Act 2004); and text and notes 12-17. As to the Secretary of State see PARA 844 note 2.

4 Excepted companies were any company: (1) which before 21 November 1975 a court had ordered to be wound up; (2) which before that date had passed a resolution for voluntary winding up; or (3) of whose property a receiver had been appointed before that date: Aircraft and Shipbuilding Industries Act 1977 s 19(5).

5 Aircraft and Shipbuilding Industries Act 1977 s 19(2), Sch 2 (Sch 2 Pt II para 5 amended by the Merchant Shipping Act 1995 s 314(2), Sch 13 para 50). As to British Shipbuilders see PARA 844.

6 Aircraft and Shipbuilding Industries Act 1977 s 19(3).

7 As to the meaning of 'wholly owned subsidiary' see PARA 845 note 5.

8 Aircraft and Shipbuilding Industries Act 1977 s 20, Sch 3. For a case on the liability of a parent company whose subsidiary had been acquired by British Shipbuilders see *Anglomar Shipping Co Ltd v Swan Hunter Shipbuilders Ltd and Swan Hunter Group Ltd, The London Lion* [1980] 2 Lloyd's Rep 456, CA.

9 'Associated person', in relation to a company or its wholly owned subsidiary, means: (1) a person who controls the company; or (2) a body corporate controlled by a person who also controls the company: Aircraft and Shipbuilding Industries Act 1977 s 56(1).

10 See the Aircraft and Shipbuilding Industries Act 1977 s 21 (repealed). If not resolved by agreement, disputes under the Aircraft and Shipbuilding Industries Act 1977 s 21 could be submitted to the Aircraft and Shipbuilding Industries Arbitration Tribunal: see PARA 854.

11 See the Aircraft and Shipbuilding Industries Act 1977 s 22(1), (2) (repealed). Provision was also made for the payment of compensation for loss arising under this provision (s 22(3) (repealed)), and for the submission of the claim to arbitration in default of agreement (see note 10) (s 22(4) (repealed)).

12 See the Aircraft and Shipbuilding Industries Act 1977 ss 23-25 (repealed).

13 See the Aircraft and Shipbuilding Industries Act 1977 ss 26, 27 (repealed).

14 See the Aircraft and Shipbuilding Industries Act 1977 s 28 (repealed). As to the meaning of 'works' see s 56(1), (6) (definition in s 56(1) amended by the Civil Aviation Act 1982 s 109, Sch 15 para 18).

15 See the Aircraft and Shipbuilding Industries Act 1977 s 29, Sch 4 (repealed).

16 See the Aircraft and Shipbuilding Industries Act 1977 s 30 (repealed).

17 See the Aircraft and Shipbuilding Industries Act 1977 ss 31-33 (repealed).

18 See the Aircraft and Shipbuilding Industries Act 1977 s 34 (repealed).

19 See the Aircraft and Shipbuilding Industries Act 1977 ss 51 (repealed), 52 (amended by the Magistrates' Courts Act 1980 s 32(2)).

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853. Compensation.

Compensation for the securities¹ of companies vested in British Shipbuilders² was to be paid by the issue of government stock, referred to as 'compensation stock'³. The amount of compensation was generally equal to the base value of the securities⁴ and was not payable before a date (called the 'conversion date') specified in an order made by the Secretary of State⁵. In certain circumstances a deduction could be made from the amount of compensation which would otherwise be payable⁶. Provision was made for the appointment of a stockholders' representative to act on behalf of holders of securities in each company which came into public ownership⁷.

Provision was made regarding the payment of compensation for loss by employees of employment, emoluments or pension rights⁸.

1 As to the meaning of 'securities' see PARA 852 note 2.

2 As to British Shipbuilders see PARA 844.

3 Aircraft and Shipbuilding Industries Act 1977 s 35(1), (9), Sch 5 (repealed). The rate of interest of compensation stock and conditions as to repayment, redemption and other matters were determined by the Treasury: see s 40. The procedure for the issue of stock was governed by the Aircraft and Shipbuilding Industries (Issue of Compensation Stock) Regulations 1977, SI 1977/754.

4 See the Aircraft and Shipbuilding Industries Act 1977 s 35(3) (repealed). The base value of quoted securities was determined according to s 37 (repealed) and that of unquoted securities according to s 38 (repealed).

5 Aircraft and Shipbuilding Industries Act 1977 s 36(1) (repealed). Provision governing the determination of the conversion date was contained in s 36(2)-(8) (repealed). Orders made under s 36(1) were not statutory instruments and are not dealt with in this work. As to the Secretary of State see PARA 844 note 2.

6 See the Aircraft and Shipbuilding Industries Act 1977 s 39 (repealed). The circumstances were, broadly speaking, that payments of dividend or interest had been made by directors before the vesting date, or transactions designed to dissipate the assets of the company, or onerous transactions, had been entered into: see s 39(1), (2) (repealed). As to such payments and transactions see PARA 852 text and notes 12, 16-17.

7 See the Aircraft and Shipbuilding Industries Act 1977 s 41, Sch 6. Disputes unresolved by agreement were to be submitted to the arbitration tribunal: see PARA 854.

8 See the Aircraft and Shipbuilding Industries Act 1977 s 50 (repealed); and PARA 862.

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C. ARBITRATION

854. The Aircraft and Shipbuilding Industries Arbitration Tribunal.

A tribunal, known as the Aircraft and Shipbuilding Industries Arbitration Tribunal, was established to determine any question or dispute expressly required by the Aircraft and Shipbuilding Industries Act 1977 to be determined by or referred to arbitration under the Act, or any matter in respect of which the Act gave jurisdiction to the tribunal¹. The arbitration tribunal must either sit as a single tribunal or sit in two or more divisions, as the Lord Chancellor may direct after consulting all of the following: (1) the Lord Chief Justice of England and Wales; (2) the Lord President of the Court of Session; (3) the Lord Chief Justice of Northern Ireland². For the hearing of any proceedings it must consist of a president³ and two other members⁴, all of whom are disqualified for membership of the House of Commons⁵. The arbitration tribunal is under the direct supervision of the Administrative Justice and Tribunals Council⁶.

The members of the tribunal hold office for the period determined at the time of their appointment⁷. However, notwithstanding that that period has not expired:

- 94 (a) a member may resign on at least one month's notice given to his appointor⁸;
and
- 95 (b) a member's appointor may declare the member's office vacant on the ground that he is unfit to continue in office⁹.

If any member of the tribunal becomes temporarily incapable of performing his duties by reason of illness or other infirmity his appointor must appoint some other fit person to discharge those duties for up to six months at a time, and the person so appointed has the same powers as the person whose place he takes¹⁰.

The members of the tribunal must be paid such sums (whether by way of salary or fees) and such allowances as the Secretary of State may determine with the approval of the Treasury¹¹.

The tribunal may appoint such staff as it considers necessary to assist it in the proper execution of its duties¹².

1 Aircraft and Shipbuilding Industries Act 1977 s 42(1). The tribunal is a court of record with an official seal which must be officially noticed: s 42(2).

2 Aircraft and Shipbuilding Industries Act 1977 s 42(2A) (added by the Constitutional Reform Act 2005 s 15(1), Sch 4 Pt 1 para 89(1), (2)). As to the Lord Chancellor see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 477 et seq. The Lord Chief Justice of England and Wales may nominate a judicial office holder (as defined in the Constitutional Reform Act 2005 s 109(4); see **COURTS**) to exercise his functions under the Aircraft and Shipbuilding Industries Act 1977 s 42(2A)(a): s 42(11) (added by the Constitutional Reform Act 2005 Sch 4 Pt 1 para 89(5)).

3 The president must be a person appointed by the Lord Chancellor who has a seven year general qualification within the meaning of the Courts and Legal Services Act 1990 s 71 (see **COURTS** vol 10 (Reissue) PARA 530), or a member of the Bar of Northern Ireland or a Solicitor of the Court of Judicature of Northern Ireland of at least seven years' standing: Aircraft and Shipbuilding Industries Act 1977 s 42(3)(a) (amended by the Courts and Legal Services Act 1990 s 71(2), Sch 10 para 40; and the Constitutional Reform Act 2005 s 59(5), Sch 11 Pt 3 para 5). See further note 7 as to provisions regarding the person to be appointed president of the tribunal. Any appointment to the office of president of the tribunal must be made, by virtue of the Constitutional Reform Act 2005 s 85, Sch 14 Pt 3, in accordance with ss 85-93, 96: see **COURTS**.

4 Aircraft and Shipbuilding Industries Act 1977 s 42(3) (amended by the Constitutional Reform Act 2005 Sch 4 Pt 1 para 89(3)). These two members are appointed by the Secretary of State after consultation with all the stockholders' representatives; one must be a person of experience in business, and the other a person of experience in finance: Aircraft and Shipbuilding Industries Act 1977 s 42(3)(b). As to stockholders' representatives see PARA 853 text and note 7. As to the Secretary of State see PARA 802.

5 House of Commons Disqualification Act 1975 s 1(1)(f), Sch 1 Pt II (amended by the Aircraft and Shipbuilding Industries Act 1977 s 42(9)). See **PARLIAMENT** vol 78 (2010) PARA 905 et seq.

6 Tribunals and Inquiries Act 1992 Sch 1 para 2; Tribunals, Courts and Enforcement Act 2007 s 45. As to the Administrative Justice and Tribunals Council see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 55 et seq.

7 Aircraft and Shipbuilding Industries Act 1977 s 42(5) (amended by the Judicial Pensions and Retirement Act 1993 s 26(10), Sch 6 para 47). No appointment of a person to be president of the tribunal may be such as to extend beyond the day he reaches 70, subject to certain transitional provisions: Aircraft and Shipbuilding Industries Act 1977 s 42(5A) (added by the Judicial Pensions and Retirement Act 1993 Sch 6 para 47, and expressed to be subject to s 26(4)-(6) (power to authorise continuance in office up to 75)). The transitional provisions referred to are those set out by s 26(11), Sch 7, and the provisions of s 27 (completion of proceedings after retirement).

8 Aircraft and Shipbuilding Industries Act 1977 s 42(5)(a). 'Appointor' means, in the case of the president of the tribunal, the Lord Chancellor, and in the case of any other member, the Secretary of State: s 42(8).

9 Aircraft and Shipbuilding Industries Act 1977 s 42(5)(b) (amended by SI 2006/1722). Where the appointor is, by virtue of the Aircraft and Shipbuilding Industries Act 1977 s 42(8)(a) (see note 8), the Lord Chancellor, the power conferred by s 42(5)(b) may be exercised only with the concurrence of the appropriate senior judge (s 42(8A) (s 42(8A), (8B) added by the Constitutional Reform Act 2005 Sch 4 Pt 1 para 89(4)), who is the Lord Chief Justice of England and Wales, unless the member whose office is to be declared vacant exercises functions wholly or mainly in Northern Ireland, in which case it is the Lord Chief Justice of Northern Ireland (Aircraft and Shipbuilding Industries Act 1977 s 42(8B) (as so added)).

10 Aircraft and Shipbuilding Industries Act 1977 s 42(6).

11 Aircraft and Shipbuilding Industries Act 1977 s 44(2). Such remuneration and allowances, and other expenses of the tribunal, are met in the first instance by the Secretary of State out of money provided by Parliament, but must be repaid to him on demand by British Shipbuilders: s 44(4). Any sums repaid to him must be paid into the Consolidated Fund: s 44(5). As to the Consolidated Fund see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 711 et seq; **PARLIAMENT** vol 78 (2010) PARA 1028 et seq.

12 Aircraft and Shipbuilding Industries Act 1977 s 44(1). The staff must be paid such remuneration (whether by way of salary or fees) and allowances as the tribunal may determine: s 44(3). These payments are made and recovered as described in note 11: s 44(4), (5).

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LEGISLATIVE CONTROLS/(3) PARTICULAR TRADES/(v) Shipbuilding/C. ARBITRATION/855.
Conduct of arbitration proceedings.

855. Conduct of arbitration proceedings.

In proceedings before the Aircraft and Shipbuilding Industries Arbitration Tribunal¹, the provisions of the Arbitration Act 1996 with respect to:

- 96 (1) the administration of oaths and the taking of affirmations²;
- 97 (2) the correction in awards of mistakes and errors³;
- 98 (3) the summoning, attendance and examination of witnesses and the production of documents⁴; and
- 99 (4) the costs of the reference and award⁵,

apply with any necessary modifications⁶.

Every order of the tribunal is enforceable as if it were an order of the High Court⁷. The tribunal may, at any stage of any proceedings before it, refer any question which arises (other than one which is primarily a question of law) to a person or persons appointed for the purpose for inquiry and report; such report may be adopted wholly or partly by the tribunal, and may be incorporated in an order of the tribunal⁸.

Subject to the provisions set out above and to provisions relating to cases stated and appeals⁹, the conduct of proceedings before the tribunal is governed by rules made by the Lord Chancellor¹⁰. Proceedings are instituted by serving¹¹ on the tribunal an originating application¹², which is served on each respondent named in it by the clerk of the tribunal by notice in the prescribed form¹³. Pleadings take the form of an applicant's statement¹⁴ and respondent's answer¹⁵. Any party may apply for interlocutory directions¹⁶, or the tribunal may give such directions of its own motion¹⁷. The time and place of the hearing is determined by the tribunal, with at least 21 days' notice to the parties¹⁸. It must be held in public¹⁹, unless all the parties otherwise agree²⁰. A party may appear in person or be represented by counsel or solicitor or, with leave, by any other person²¹. If a dispute is compromised the tribunal may make a consent order and further proceedings are stayed²². The tribunal's final decision is given in writing with reasons²³.

Proceedings may be dismissed for want of prosecution²⁴, and an application may be withdrawn by notice served on the clerk and accompanied by the written consent of every other party²⁵.

Subject to all the provisions described above, the tribunal may regulate its own procedure²⁶.

1 As to the tribunal see PARA 854.

2 See the Arbitration Act 1996 s 38(5); and **ARBITRATION** vol 2 (2008) PARA 1248.

3 See the Arbitration Act 1996 s 57; and **ARBITRATION** vol 2 (2008) PARA 1267.

4 See the Arbitration Act 1996 ss 34, 43, 44; and **ARBITRATION** vol 2 (2008) PARAS 1245, 1253, 1254.

5 See the Arbitration Act 1996 ss 59-65; and **ARBITRATION** vol 2 (2008) PARAS 1260, 1270-1273.

6 Aircraft and Shipbuilding Industries Act 1977 s 42(7), Sch 7 para 2 (amended by the Arbitration Act 1996 s 107(1), Sch 3 para 32). Only those provisions of the Arbitration Act 1996 apply: Aircraft and Shipbuilding Industries Act 1977 Sch 7 para 2 (as so amended).

7 Aircraft and Shipbuilding Industries Act 1977 Sch 7 para 12.

8 Aircraft and Shipbuilding Industries Act 1977 Sch 7 para 13.

9 In the Aircraft and Shipbuilding Industries Act 1977 Sch 7 paras 3, 4: see PARA 856.

10 Aircraft and Shipbuilding Industries Act 1977 Sch 7 para 5(1). Such rules are made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: Sch 7 para 5(1), (2); and see **PARLIAMENT** vol 34 (Reissue) PARA 945. See the Aircraft and Shipbuilding Industries Arbitration Tribunal Rules 1977, SI 1977/1022. The Lord Chancellor's function under the Aircraft and Shipbuilding Industries Act 1977 Sch 7 para 5(1) is a protected function for the purposes of the Constitutional Reform Act 2005 s 19: see s 19(5), Sch 7 para 4; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

11 As to the service of documents see the Aircraft and Shipbuilding Industries Arbitration Tribunal Rules 1977, SI 1977/1022, r 21.

12 Aircraft and Shipbuilding Industries Arbitration Tribunal Rules 1977, SI 1977/1022, r 2(1), Schedule Form 1. The application must name as respondents the parties and directly interested persons, and certify that it does not relate to Scottish proceedings: r 2(2). Directly interested persons may be joined to the proceedings by the tribunal, and it may also dismiss from the proceedings persons not directly interested: r 4.

Applications must be numbered, listed and filed by the clerk, and the lists and files must be available for inspection: see rr 7-9.

13 Aircraft and Shipbuilding Industries Arbitration Tribunal Rules 1977, SI 1977/1022, r 3.

14 The statement is served on the tribunal, and then a copy is served by the clerk on each respondent with notice in the prescribed form: see the Aircraft and Shipbuilding Industries Arbitration Tribunal Rules 1977, SI 1977/1022, r 5. No further step may be taken in any proceedings before the expiration of time for service of an answer: r 22.

15 The answer is served on the tribunal, and then a copy is served by the clerk on the applicant: Aircraft and Shipbuilding Industries Arbitration Tribunal Rules 1977, SI 1977/1022, r 6(1), (5). The respondent must include in his answer an address for service: r 6(4). A respondent must state which (if any) of the facts alleged by the applicant he denies, and set out any other matters or contentions; any facts which he does not deny he is taken to have admitted, but the tribunal may still require proof: r 6(2), (3).

16 Aircraft and Shipbuilding Industries Arbitration Tribunal Rules 1977, SI 1977/1022, r 10. As to the hearing of such applications see r 11.

17 Aircraft and Shipbuilding Industries Arbitration Tribunal Rules 1977, SI 1977/1022, r 12.

18 Aircraft and Shipbuilding Industries Arbitration Tribunal Rules 1977, SI 1977/1022, r 13(1), (2).

19 This does not apply to applications for interlocutory directions: Aircraft and Shipbuilding Industries Arbitration Tribunal Rules 1977, SI 1977/1022, r 13(3).

20 Aircraft and Shipbuilding Industries Arbitration Tribunal Rules 1977, SI 1977/1022, r 13(3) and proviso. If the parties agree to a private hearing a member of the Administrative Justice and Tribunals Council is entitled to attend: r 13(3) proviso. As to the Administrative Justice and Tribunals Council see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 55 et seq. Evidence before the tribunal may be given orally or, if the parties to the proceedings consent, by affidavit but the tribunal may at any stage of the proceedings make an order requiring the personal attendance of any deponent for examination and cross-examination: r 15.

21 Aircraft and Shipbuilding Industries Arbitration Tribunal Rules 1977, SI 1977/1022, r 14.

22 Aircraft and Shipbuilding Industries Arbitration Tribunal Rules 1977, SI 1977/1022, r 16. See also note 23.

23 Aircraft and Shipbuilding Industries Arbitration Tribunal Rules 1977, SI 1977/1022, r 17(1). Orders of the tribunal are sealed: r 17(3). A copy of the decision must be sent to every party and a copy must be available for inspection: r 17(2).

24 Aircraft and Shipbuilding Industries Arbitration Tribunal Rules 1977, SI 1977/1022, r 19.

25 Aircraft and Shipbuilding Industries Arbitration Tribunal Rules 1977, SI 1977/1022, r 20.

26 Aircraft and Shipbuilding Industries Arbitration Tribunal Rules 1977, SI 1977/1022, r 23.

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LEGISLATIVE CONTROLS/(3) PARTICULAR TRADES/(v) Shipbuilding/C. ARBITRATION/856.
Special cases and appeals.

856. Special cases and appeals.

The Aircraft and Shipbuilding Industries Arbitration Tribunal¹ may, and if so ordered by the Court of Appeal must, state in the form of a special case for determination by that court any question of law which may arise before it². Application for a special case to be stated is made by notice in writing to the tribunal³. In certain cases⁴ an appeal lies from the tribunal to the Court of Appeal on any question of law or fact⁵.

1 As to the tribunal see PARA 854.

2 Aircraft and Shipbuilding Industries Act 1977 s 42(7), Sch 7 para 3.

3 Aircraft and Shipbuilding Industries Arbitration Tribunal Rules 1977, SI 1977/1022, r 18(1). The tribunal clerk must serve a copy on every other party concerned: r 18(2). The tribunal must consider the application and notify its decision to the parties, giving reasons if it declines to state a case: r 18(3).

4 Appeal lies against a determination or order of the tribunal with respect to a claim by British Shipbuilders: (1) against the directors of a company to enforce a liability under the Aircraft and Shipbuilding Industries Act 1977 s 23 (repayment of dividends or interest); or (2) for compensation for loss arising from any transaction referred to the tribunal under s 28 (transfer of works), s 30 (dissipation of assets), or s 31 (onerous transactions): Sch 7 para 4(a), (b). See also PARA 852. Note that all the sections cited have been repealed.

5 Aircraft and Shipbuilding Industries Act 1977 Sch 7 para 4.

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D. MISCELLANEOUS PROVISIONS

857. Unfair practices.

A private company¹ engaged in shipbuilding or shiprepairing² may make a written complaint to the Secretary of State³ that a practice employed by British Shipbuilders or one of its wholly owned subsidiaries in relation to shipbuilding or the provision of shipbuilding services, is unfair to the complainant, for a reason specified in the complaint⁴. The Secretary of State must send a copy of the complaint to the corporation and, after such period as he thinks reasonable, send a copy of any comments of the corporation to the complainant; if he considers that the complaint raises a question of substance and that the complainant has a reasonable case to make in support of it, the Secretary of State must afford the complainant and the corporation an opportunity to make representations on the matter to a person appointed by him⁵. The Secretary of State must consider the report of that person, and if it appears to the Secretary of State that the practice is unfair, he must give the corporation such directions⁶ as appear to him to be requisite to secure the removal of the ground on which it is unfair⁷.

1 ie a person other than British Shipbuilders, one of its wholly owned subsidiaries, or a body corporate the whole of whose equity share capital is owned by the Crown: Aircraft and Shipbuilding Industries Act 1977 s 47(1)(a)-(c), (2)(a)-(c). As to British Shipbuilders see PARA 844. As to the meaning of 'wholly owned subsidiary' see PARA 845 note 5.

2 'Shiprepairing' includes refitting, converting and maintaining ships, and 'provision of shiprepairing services' has a corresponding meaning: Aircraft and Shipbuilding Industries Act 1977 s 47(2).

3 As to the Secretary of State see PARA 802.

4 Aircraft and Shipbuilding Industries Act 1977 s 47(1), (2).

5 Aircraft and Shipbuilding Industries Act 1977 s 47(3).

6 For the general power of the Secretary of State to give directions to the corporation see PARA 846.

7 Aircraft and Shipbuilding Industries Act 1977 s 47(4). He must furnish both the corporation and the complainant with a copy of the report of the appointed person and a statement of his (ie the Secretary of State's) conclusions on it: s 47(6). If directions are given to the corporation, he must furnish the complainant with a statement of them: s 47(5).

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858. Pensions.

British Shipbuilders¹ may, in respect of such of the persons as are or have been employed by it or any of its wholly owned subsidiaries² as it may determine:

- 100 (1) pay such pensions³ to or in respect of those persons;
- 101 (2) make such payments towards the provision of such pensions; or
- 102 (3) establish and maintain such schemes for the payment of such pensions,

as it may determine⁴.

A scheme under head (3) above may provide that where a person participating in the scheme as an employee of the corporation or any of its wholly owned subsidiaries becomes a member of the corporation⁵, his service as a member is to be treated for the purposes of the scheme as service as an employee⁶. However, if under the scheme any description of benefit may, or may in particular circumstances, be conferred only at the request or with the consent of the corporation, it may not make the provision set out above unless it also provides that except with the approval of the Secretary of State⁷ and the Treasury, no such request or consent may be made or given in the case of a benefit for or in respect of a member of the corporation⁸.

The Secretary of State, by regulations⁹ made by statutory instrument¹⁰, may make such provision in relation to any existing pension scheme¹¹ which provides for pensions to or in respect of persons who are or have been employed by a company which became a wholly owned subsidiary of the corporation, as appears to him expedient in consequence of its having become such a subsidiary¹². Any persons having pension rights¹³ under existing schemes (whether or not they are past or present employees as described above) must not be placed in any worse position by virtue of any such regulations¹⁴. If they are, the regulations are not invalid, but the Secretary of State must make the necessary amending regulations¹⁵. Any dispute as to whether such a person is or is not in a worse position under such regulations, including any question whether the position has been rectified by amending regulations, must be referred to and resolved by an employment tribunal¹⁶.

1 As to British Shipbuilders see PARA 844.

2 As to the meaning of 'wholly owned subsidiary' see PARA 845 note 5. References to employment by a wholly owned subsidiary of the corporation include references to: (1) employment before the date of transfer (see PARA 852) by a company which became a wholly owned subsidiary; and (2) employment under certain agreements for the rendering of personal services (see PARA 852 text and note 8): Aircraft and Shipbuilding Industries Act 1977 s 49(15).

3 'Pension' in relation to any person means a pension, whether contributory or not, of any kind whatsoever payable to or in respect of him, and includes a gratuity so payable and a return of contributions or insurance premiums to a pension fund with or without interest or any other addition: Aircraft and Shipbuilding Industries Act 1977 s 56(1).

4 Aircraft and Shipbuilding Industries Act 1977 s 49(1).

5 As to the appointment of members of the corporation see PARA 844.

6 Aircraft and Shipbuilding Industries Act 1977 s 49(2).

7 As to the Secretary of State see PARA 802.

8 Aircraft and Shipbuilding Industries Act 1977 s 49(3); Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981, SI 1981/1670, art 2(2).

9 Such regulations may have effect from a date before their making, but not so as to put any person (other than the corporation or a wholly owned subsidiary) in a worse position: Aircraft and Shipbuilding Industries Act 1977 s 49(11).

10 The statutory instrument is subject to annulment in pursuance of a resolution of either House of Parliament: Aircraft and Shipbuilding Industries Act 1977 s 49(4). See **PARLIAMENT** vol 34 (Reissue) PARA 945.

11 An 'existing pension scheme' is any pension scheme not made under the Aircraft and Shipbuilding Industries Act 1977 s 49(1): s 49(4). 'Pension scheme' includes any form of arrangements for the payment of pensions, whether subsisting by reason of an Act, trust, contract or otherwise, and also includes any customary practice under which pensions are paid: s 56(1).

12 Aircraft and Shipbuilding Industries Act 1977 s 49(4). In particular such regulations may make provision for:

- 30 (1) the complete or partial amalgamation of existing schemes with other existing schemes or with schemes established under s 49(1) (s 49(5)(a));
- 31 (2) amending, repealing or revoking: (a) existing schemes; (b) any enactment relating to existing schemes or amalgamated schemes; or (c) any trust deed, rules or other instrument made for the purposes of an existing or amalgamated scheme (s 49(5)(b));
- 32 (3) complete or partial transfer of liabilities and obligations under existing schemes, or reducing or extinguishing such liabilities (s 49(5)(c));
- 33 (4) complete or partial transfer, or winding up, of any pension fund held for the purposes of an existing scheme (s 49(5)(d)); and
- 34 (5) supplemental or consequential matters (s 49(5)(e)).

See the Shipbuilding Industry (Pension Schemes) Regulations 1978, SI 1978/232. See also the Aircraft Industry (Pension Schemes) Regulations 1977, SI 1977/1329; and PARA 862.

The power to make regulations includes power to provide for the determination of any question of fact or of law which may arise in giving effect to them, and for regulating the practice and procedure to be followed (otherwise than in court proceedings) in connection with the determination of such questions: Aircraft and Shipbuilding Industries Act 1977 s 49(14). Nothing in s 49(4) or (5) authorises the making of provision for the diversion of any pension fund to purposes other than the payment of pensions to or in respect of persons to whom s 49(1) (see text and notes 1-4) applies: s 49(6).

13 'Pension rights' includes all forms of right to or eligibility for the present or future payment of a pension to or in respect of a person, and any expectation of the accruer of a pension to or in respect of a person under any customary practice, and also includes a right of allocation in respect of the present or future payment of a pension: Aircraft and Shipbuilding Industries Act 1977 s 56(1).

14 Aircraft and Shipbuilding Industries Act 1977 s 49(7). However, regulations may make exceptional provisions to meet cases in which, in connection with or in anticipation of any provision of the Aircraft and Shipbuilding Industries Act 1977, pension rights have been created otherwise than in the ordinary course: s 49(8).

15 Aircraft and Shipbuilding Industries Act 1977 s 49(9). He must do so as soon as possible after he is satisfied that the objective of s 49(7) is not satisfied, or after a determination under s 49(10) (see text and note 16): s 49(9).

16 Aircraft and Shipbuilding Industries Act 1977 s 49(10) (amended by the Employment Protection (Consolidation) Act 1978 s 159(2), Sch 16 para 28; and by virtue of the Employment Rights (Dispute Resolution) Act 1998 s 1(2)(a)). If the case requires, the dispute may be referred to and resolved by a tribunal established under the Industrial Tribunals (Northern Ireland) Order 1996, SI 1996/1921, art 3: see the Aircraft and Shipbuilding Industries Act 1977 s 49(10) (amended by SI 1996/1921). Where by reason of any provision of regulations (other than under the Aircraft and Shipbuilding Industries Act 1977 s 49(8): see note 14) loss is suffered by a person making contributions or paying pensions under an existing scheme, other than a wholly owned subsidiary, compensation is payable by the corporation, and if the amount of compensation cannot be agreed, it must be determined by arbitration: s 49(12). As to arbitration see PARAS 854-856.

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859. Liability for subsidiaries.

If any sum required to be paid by a judgment or order by a wholly owned subsidiary¹ of British Shipbuilders² is not paid by that subsidiary within 14 days beginning on the date on which execution becomes leviable to enforce the judgment or order, the corporation is liable to pay the sum and the judgment or order may be enforced against the corporation³. When a company becomes a wholly owned subsidiary of the corporation, certain persons⁴ who were liable under contracts of guarantee or indemnity in respect of that company cease to be so liable⁵. On the date of transfer⁶, the assets of companies coming into public ownership were released from all existing charges⁷. Subject to certain exceptions⁸, no person became entitled to exercise any right, or became subject to any obligation, in respect of a loan, on specified grounds connected with the passing of the Aircraft and Shipbuilding Industries Act 1977⁹.

1 As to the meaning of 'wholly owned subsidiary' see PARA 845 note 5.

2 As to British Shipbuilders see PARA 844.

3 Aircraft and Shipbuilding Industries Act 1977 s 53(1) (amended by the British Shipbuilders Act 1983 ss 2(4), 3(3), Schedule).

4 The persons who, immediately before the company became a wholly owned subsidiary: (1) were associated persons (see PARA 852 note 9); or (2) controlled some other company or body corporate which controlled it: Aircraft and Shipbuilding Industries Act 1977 s 53(4).

5 Aircraft and Shipbuilding Industries Act 1977 s 53(3). See *Anglomar Shipping Co Ltd v Swan Hunter Shipbuilders Ltd and Swan Hunter Group Ltd, The London Lion* [1980] 2 Lloyd's Rep 456, CA.

6 See PARA 852.

7 Aircraft and Shipbuilding Industries Act 1977 s 53(5).

8 See the Aircraft and Shipbuilding Industries Act 1977 s 53(7).

9 See the Aircraft and Shipbuilding Industries Act 1977 s 53(6).

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860. Service of notices.

Where any notice or other document is required or authorised to be given to or served on any person under the Aircraft and Shipbuilding Industries Act 1977¹, it may be given to or served on him: (1) by delivering it to him²; (2) by leaving it at his proper address³; or (3) by sending it by post to him at that address⁴. In the case of a body corporate, a document may be given to or served on its secretary or clerk⁵, and, in the case of a partnership, it may be given to or served on a partner or a person having the control or management of the partnership business⁶.

If the name or address of any person having an interest in premises to or on whom a document is to be given or served cannot after reasonable inquiry be ascertained, the document may be given or served: (a) by addressing it to him either by name or by the description of 'the owner' or, as the case may be, 'the occupier' of the premises and describing them; and (b) either by delivering it to some responsible person on the premises or by affixing it, or a copy of it, to some conspicuous part of the premises⁷.

1 Aircraft and Shipbuilding Industries Act 1977 s 54(1).

2 Aircraft and Shipbuilding Industries Act 1977 s 54(2)(a).

3 Aircraft and Shipbuilding Industries Act 1977 s 54(2)(b). For this purpose and that of what is now the Interpretation Act 1978 s 7 (see **STATUTES** vol 44(1) (Reissue) PARA 1388) a person's proper address is his last known address, except that: (1) in the case of a body corporate or its secretary or clerk, it is the address of the registered or principal office of that body; and (2) in the case of a partnership or a person having the control or management of the partnership business, it is the address of the principal office of the partnership; the principal office of a company registered outside the United Kingdom or a partnership carrying on business outside the United Kingdom is its principal office within the United Kingdom: Aircraft and Shipbuilding Industries Act 1977 s 54(4). If a person has specified an address for the service of documents other than his proper address as defined above, that specified address is also to be treated as his proper address: s 54(5). As to the meaning of 'United Kingdom' see PARA 806 note 7.

4 Aircraft and Shipbuilding Industries Act 1977 s 54(2)(c) (amended by the Statute Law (Repeals) Act 2004).

5 Aircraft and Shipbuilding Industries Act 1977 s 54(3)(a).

6 Aircraft and Shipbuilding Industries Act 1977 s 54(3)(b).

7 Aircraft and Shipbuilding Industries Act 1977 s 54(6).

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861. Construction credits.

The Secretary of State¹, with the consent of the Treasury, may guarantee the payment by any person who is an individual resident in, or a body corporate incorporated under the law of any part of the United Kingdom², any of the Channel Islands or the Isle of Man of any sum payable by that person in respect of principal or interest under arrangements (whether by way of loan or otherwise) entered into by that person for the purpose of financing the construction³ to the order of that person in any member state of the European Union of a ship⁴ or mobile offshore installation⁵ of the qualifying size⁶, and its equipment⁷ to his order⁸. The aggregate of the liability of the Secretary of State under the guarantees together with the guarantees given under superseded legislation⁹ may not exceed £1,400 million, less the amounts which have been paid by him to meet a liability and have not been repaid to him¹⁰.

The Secretary of State may make a loan to any person who is a creditor in respect of a sum the payment of which has been so guaranteed by the Secretary of State¹¹. The aggregate of the loans outstanding may not at any time exceed the limit with respect to guarantees, less the amounts which have been paid by him to meet a liability and have not been repaid to him¹².

1 As to the Secretary of State see PARA 802.

2 As to the meaning of 'United Kingdom' see PARA 806 note 7.

3 'Construction' includes the completion of a partially constructed ship or installation and the alteration of a ship or installation and of a partially constructed ship or installation: Industry Act 1972 s 10(9) (amended by the Shipbuilding Act 1979 s 2).

4 'Ship' includes every description of vessel used in navigation: Industry Act 1972 s 12(1).

5 'Mobile offshore installation' means any installation intended for underwater exploitation of mineral resources or exploration with a view to such exploitation and which can move by water from place to place without major dismantling or modification, whether or not it has its own motive power: Industry Act 1972 s 12(1).

6 A ship other than a tug is of the qualifying size if its gross tonnage, ascertained in accordance with regulations under the Merchant Shipping Act 1995 s 19 (see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 248) is not less than 100 tons (Industry Act 1972 s 12(2)(a) (amended by the Merchant Shipping Act 1995 s 314(2), Sch 13 para 47)); a tug is of the qualifying size if it is of not less than 500 brake horsepower (Industry Act 1972 s 12(2)(b)); and an installation is of the qualifying size if it weighs not less than 100 tons excluding fuel and water (s 12(2)(c)).

7 'Equipment', in relation to a ship or installation, means the installation on or in it, or the provision for it, of fixed or movable equipment, or apparatus or furnishings of any kind: Industry Act 1972 s 12(1).

8 Industry Act 1972 s 10(1) (amended by SI 1987/1807). A guarantee or loan may be given on such terms and conditions as may be specified with the approval of the Treasury: Industry Act 1972 s 10(7). The Secretary of State, with the consent of the Treasury, may renew such a guarantee (including a guarantee previously so renewed) on the transfer of the liability to which it relates, or any part of that liability, from one body corporate to another within the same group: s 10(7A) (s 10(7A), (7B) added by the Industry Act 1975 s 24(2)). Two bodies corporate are in the same group for this purpose if one is the other's holding company or both are subsidiaries of a third body corporate: Industry Act 1972 s 10(7B) (as so added). In addition to construction credits (by way of guarantee) s 11 also provided for the making of grants by the Secretary of State towards the costs paid in the years 1972-1974 of the construction of certain ships. 'Holding company' and 'subsidiary' have the meanings assigned to them by the Companies Act 2006 s 1159 (see **COMPANIES** vol 14 (2009) PARA 25): Industry Act 1972 s 10(9) (amended by SI 2009/1941).

9 le under the Shipbuilding Industry Act 1967 s 7 (repealed).

10 Industry Act 1972 s 10(2), (3) (s 10(2) amended by the Industry Act 1975 s 24). The original limit of £1,000 million was raised to £1,400 million by the Ships and Mobile Offshore Installations Construction Credits (Increase of Limit) Order 1975, SI 1975/138, art 2. The maximum may be raised to £1,800 million by the Secretary of State by order contained in a statutory instrument approved by a resolution of the House of Commons: Industry Act 1972 s 10(3), (4) (s 10(3) amended by the Industry Act 1975 s 23). The liabilities of the Secretary of State do not include liability in respect of interest on any money which is the subject of a guarantee: Industry Act 1972 s 10(8).

11 Industry Act 1972 s 10(5). Grants may be made by the Secretary of State with the consent of the Treasury, on such terms and conditions as he may determine, to any person who is or has been a creditor for the purpose of supplementing the interest receivable or received on the principal money the payment of which has been guaranteed under s 10 or under the Shipbuilding Industry Act 1967 s 7 (repealed): Industry Act 1972 s 10A (added by the Industry Act 1975 s 25).

12 Industry Act 1972 s 10(6) (amended by the Industry Act 1975 s 24).

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(vi) Aircraft Manufacture

862. Privatisation of aircraft manufacturing industry: creation of British Aerospace Ltd.

Under the Aircraft and Shipbuilding Industries Act 1977, the manufacture of aircraft and ships was taken into public ownership and two corporations, British Shipbuilders and British Aerospace, were formed¹. The British Aerospace Act 1980, however, made provision for the vesting of the property, rights, liabilities and obligations of British Aerospace in a successor company, British Aerospace Ltd², as from the appointed day, that is, 1 January 1981³, and for the dissolution of British Aerospace as from 31 December 1981⁴.

The successor company was wholly owned by the Crown at the appointed day⁵, and provision was made as to the initial government shareholding in the company⁶, and the financial structure of the company and its subsidiaries (including the establishment and application of a 'statutory reserve', being the amount by which the government investment in British Aerospace exceeded the initial share capital of the successor company)⁷.

The Secretary of State⁸ was empowered to acquire voting shares in the successor company, or rights to subscribe for ordinary shares, or securities which could be converted into, or carry, rights to subscribe for shares, but was not permitted to dispose of them without the consent of the Treasury⁹. The Secretary of State was required to set a target investment limit for the government shareholding in the company as soon as it ceased to be wholly owned by the Crown, and was empowered from time to time, by order made by statutory instrument, to fix a new limit¹⁰.

If a resolution is passed for the voluntary winding up of the successor company, or a winding-up order has been made by the court¹¹, the Secretary of State is liable, on the commencement of the winding up¹², to discharge certain outstanding liabilities of the successor company¹³, and he becomes a creditor of the company to the extent of the amount he has paid¹⁴.

Employment by British Aerospace was declared to be uninterrupted by the transfer to British Aerospace Ltd, and pension rights were expressly preserved¹⁵.

1 See generally the Aircraft and Shipbuilding Industries Act 1977; and PARA 844 et seq. British Aerospace was formed of the companies mentioned in s 19(1), Sch 1 Pt I. References in that Act to British Aerospace were generally removed by the British Aerospace Act 1980 ss 10(1), 15(2), Sch 3: see PARA 844 note 1.

2 See the British Aerospace Act 1980 s 1(1), (2), 14(1) (s 1(2) repealed); and the British Aerospace (Nominated Company) Order 1980, SI 1980/1989 (lapsed).

3 See the British Aerospace Act 1980 ss 1, 14, Sch 1; and the British Aerospace (Appointed Day) Order 1980, SI 1980/1988. Provision was made for the continuation in force or effect after the appointed day of agreements and transactions entered into before that day (British Aerospace Act 1980 s 1(3), (6), Sch 1 para 1), for the continuity of certain proceedings (s 1(4) (repealed)), and for the liability of the successor company under judgments or orders made before the appointed day (s 8 (repealed)). Specified government investment in British Aerospace was extinguished immediately before the appointed day: see s 2 (repealed).

Provision is made in relation to the liability of the successor company to corporation tax (see **INCOME TAXATION**), and development land tax (now abolished): see the British Aerospace Act 1980 s 12 (amended by the Taxation of Chargeable Gains Act 1992 s 290(1), Sch 10 para 4).

4 See the British Aerospace Act 1980 s 10 (s 10(2)-(10) repealed); and the British Aerospace (Dissolution) Order 1981, SI 1981/1793 (lapsed). Transitional provision was also made: see the British Aerospace Act 1980 s 10, Sch 2 (Sch 2 repealed).

5 See the British Aerospace Act 1980 s 1(2) (repealed).

6 See the British Aerospace Act 1980 s 3 (repealed), which provided for the issue of shares under the direction of the Secretary of State. As to the Secretary of State see PARA 802. Any administrative expenses of the Secretary of State are paid out of money provided by Parliament: British Aerospace Act 1980 s 13.

7 See the British Aerospace Act 1980 s 4 (amended by SI 2008/948).

8 The Secretary of State's functions in relation to the acquisition and disposal of shares, etc could be discharged by a nominee, who did so under the direction of the Secretary of State with the consent of the Treasury: see the British Aerospace Act 1980 s 6 (repealed).

9 British Aerospace Act 1980 s 5(1)-(3) (repealed). The Secretary of State's expenses were met out of money provided by Parliament: s 5(4) (repealed). Any dividend or other sums received by him as a result of such acquisition had to be paid into the Consolidated Fund: s 5(5) (repealed). As to the Consolidated Fund see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 711 et seq; **PARLIAMENT** vol 78 (2010) PARA 1028 et seq.

10 See the British Aerospace Act 1980 s 7 (repealed). Any such limit was required to be lower than the one which it replaced: s 7(4)(a) (repealed). The most recent limit was set by the British Aerospace Act 1980 (Government Shareholding) Order 1986, SI 1986/848 (lapsed), setting a target investment limit of nil: see art 2 (lapsed).

11 As to winding up generally see **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(3) (2004 Reissue) PARA 432 et seq.

12 Ie on the passing of the resolution or, as the case may be, on the making of the order: British Aerospace Act 1980 s 9(6).

13 British Aerospace Act 1980 s 9(1), (2) (s 9(2) amended by the Insolvency Act 1986 s 439(2), Sch 14; and the Statute Law (Repeals) Act 2004). The liabilities are any obligation transferred to the successor company on the appointed day: s 9(2) (as so amended). Any sums required by the Secretary of State to discharge any such liability are paid out of money provided by Parliament: s 9(3).

14 British Aerospace Act 1980 s 9(4), which further provides that the Secretary of State's claim is to be treated for the purposes of the winding up as a claim against the original liability. Any sums received by the Secretary of State in the winding up must be paid into the Consolidated Fund: s 9(5).

15 British Aerospace Act 1980 Sch 1 para 2. In the period during which the aircraft industry was in public ownership the same powers to establish and maintain pension schemes existed as have been previously described in relation to shipbuilding: see the Aircraft and Shipbuilding Industries Act 1977 s 49; and PARA 858. See also the Aircraft Industry (Pension Schemes) Regulations 1977, SI 1977/1329, made under the Aircraft and Shipbuilding Industries Act 1977 s 49.

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LEGISLATIVE CONTROLS/(3) PARTICULAR TRADES/(vii) Scrap Metal Dealers/863. Registration of scrap metal dealers.

(vii) Scrap Metal Dealers

863. Registration of scrap metal dealers.

No person may carry on business as a scrap metal dealer¹ in the area of a local authority² unless the appropriate particulars³ relating to him are entered in the register maintained by the authority⁴. A person (other than a local authority in its own area⁵) carrying on or proposing to carry on business as a scrap metal dealer in the area of a local authority, on furnishing the authority in writing with the appropriate particulars, may apply to the authority to enter those particulars in the register, and the authority must then enter those particulars relating to the applicant in the register⁶.

1 For the purposes of the Scrap Metal Dealers Act 1964, a person carries on business as a scrap metal dealer if he carries on a business which consists wholly or partly of buying and selling scrap metal (whether in the form in which it was bought or otherwise) other than a business in the course of which scrap metal is not bought except as materials for the manufacture of other articles and is not sold except as a by-product of such manufacture or as surplus materials bought but not required for such manufacture; and 'scrap metal dealer' (where that expression is used in the Act otherwise than in a reference to carrying on business as a scrap metal dealer) means a person who carries on business as a scrap metal dealer: s 9(1) (prospectively amended by the Vehicles (Crime) Act 2001 s 43, Schedule para 1(1), (2)(a)-(c) as from a day to be appointed, so as to exclude also specified activities of the business of a motor salvage operator within the meaning of that Act). At the date at which this volume states the law, no day had been appointed bringing these amendments into force. 'Scrap metal' includes any old metal, and any broken, worn out, defaced or partly manufactured articles made wholly or partly of metal and any metallic wastes, and also includes old, broken, worn out or defaced tooltips or dies made of any of the materials commonly known as hard metal or of cemented or sintered metallic carbides: Scrap Metal Dealers Act 1964 s 9(2). Scrap metal may also include new metal, eg offcuts: *Jenkins v A Cohen & Co Ltd* [1971] 2 All ER 1384, [1971] 1 WLR 1280, DC. 'Article' includes any part of an article: Scrap Metal Dealers Act 1964 s 9(2). Any reference to metal, except in the expressions 'hard metal' and 'metallic carbides', is to be taken as a reference to any of the following metals: aluminium, copper, iron, lead, magnesium, nickel, tin and zinc, or, subject to s 9(4), to brass, bronze, gunmetal, steel, white metal or any other alloy of any of those metals: s 9(3). A substance being an alloy referred to in s 9(3) is not to be treated as being such an alloy if of its weight, 2% or more is attributable to gold or silver or any one or more of the following metals: platinum, iridium, osmium, palladium, rhodium and ruthenium: s 9(4).

2 'Local authority' means the council of a district or London borough or the Common Council of the City of London but, in relation to Wales, means the council of a county or county borough: Scrap Metal Dealers Act 1964 s 9(2) (amended by the Local Government Act 1972 s 272(1), Sch 30; and the Local Government (Wales) Act 1994 s 22(3), Sch 9 para 6). For the purposes of the Scrap Metal Dealers Act 1964 s 1, a person carrying on business as a scrap metal dealer is treated as carrying on that business in the area of a local authority if, but only if: (1) a place in that area is occupied by him as a scrap metal store; or (2) no place is occupied by him as a scrap metal store, whether in that area or elsewhere, but he has his usual place of residence in that area; or (3) no place is occupied by him as a scrap metal store, whether in that area or elsewhere, but a place in that area is occupied by him wholly or partly for the purposes of that business: s 1(2)(a)-(c). 'Place' includes any land, whether consisting of enclosed premises or not; and 'scrap metal store' means a place where scrap metal is received or kept in the course of the business of a scrap metal dealer: s 9(2). It is the duty of every local authority to enforce the provisions of s 1 with respect to persons carrying on business as scrap metal dealers in its area: s 1(9).

3 As to the appropriate particulars see the Scrap Metal Dealers Act 1964 s 1(4)-(6); and PARA 864.

4 Scrap Metal Dealers Act 1964 s 1(1). Every local authority must maintain a register of persons carrying on business in its area as scrap metal dealers: s 1(1). Any person who carries on business as a scrap metal dealer in contravention of s 1(1) is guilty of an offence, and liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 1(7) (amended by virtue of the Criminal Justice Act 1982 ss 38(1), (6), (8), 46(1), (4)). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

5 As to the carrying on of business as a scrap metal dealer by a local authority in its area see the Scrap Metal Dealers Act 1964 s 1(10); and PARA 864 notes 11-12.

6 Scrap Metal Dealers Act 1964 s 1(3).

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864. Registered particulars.

The appropriate particulars relating to a scrap metal dealer¹, in relation to the area of a local authority², are:

- 103 (1) his full name³;
- 104 (2) his address⁴;
- 105 (3) the address of each place⁵, if any, in the area which is occupied by the dealer as a scrap metal store⁶;
- 106 (4) the fact, if such is the case, that no place is occupied by him as a scrap metal store, whether in that area or elsewhere, but that he has his usual place of residence in that area⁷; and
- 107 (5) the fact, if such is the case, that no place is occupied by him as a scrap metal store whether in that area or otherwise, but that a place in that area is occupied by him wholly or partly for the purposes of that business, together with the address of that place⁸.

Except in the case of a local authority carrying on business as a scrap metal dealer in its own area⁹, the entry of these particulars in the register maintained by a local authority must include a note of the day on which the entry is made, and at the end of a period of three years beginning with that day, and of each subsequent period of three years, the authority must cancel the entry unless the dealer applies before the end of the period for the registration to be continued for a further three-year period¹⁰.

If any event occurs which involves an alteration of the registered particulars relating to a scrap metal dealer, the dealer must, within 28 days of the occurrence of the event in question, give notice of the alteration to the local authority, which must then make the necessary amendment¹¹. Where a dealer ceases to carry on business as a scrap metal dealer he must give similar notice to the local authority, which must thereupon cancel the entry relating to him in the register¹².

1 As to the meanings of 'scrap metal dealer' and 'scrap metal' see PARA 863 note 1.

2 As to the meaning of 'local authority' see PARA 863 note 2.

3 Scrap Metal Dealers Act 1964 s 1(4)(a). In relation to any person who carries on, or proposes to carry on, the business of a scrap metal dealer in partnership with any other person, the particulars which that person is required to furnish include, in addition to those specified in s 1(4), the name under which the partnership is carried on, the name and place of residence of each other member of the partnership who is an individual and the name and registered or principal office of each other member of the partnership who is a body corporate: s 7(1)(b).

4 Scrap Metal Dealers Act 1964 s 1(4)(b). If the dealer is an individual, the address is that of his usual place of residence, but if the dealer is a body corporate, the address is that of its registered principal office: s 1(4)(b) (i), (ii).

5 As to the meaning of 'place' see PARA 863 note 2.

6 Scrap Metal Dealers Act 1964 s 1(4)(c). As to the meaning of 'scrap metal store' see PARA 863 note 2.

7 Scrap Metal Dealers Act 1964 s 1(4)(d).

8 Scrap Metal Dealers Act 1964 s 1(4)(e).

9 As to the carrying on of such a business by a local authority in its area see the Scrap Metal Dealers Act 1964 s 1(10); and notes 11-12. As to the meaning of 'carry on business as a scrap metal dealer' see PARA 863 note 1.

10 See the Scrap Metal Dealers Act 1964 s 1(6).

11 Scrap Metal Dealers Act 1964 s 1(5)(a). Failure to comply with this requirement as to notice is an offence rendering the dealer liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 1(7) (amended by virtue of the Criminal Justice Act 1982 ss 38(1), (6), (8), 46(1), (4)). In the case of a local authority carrying on business as a scrap metal dealer in its own area, if any event occurs which involves the amendment of its appropriate particulars it must thereupon amend the entry in the register: Scrap Metal Dealers Act 1964 s 1(5)(a), (10). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

12 Scrap Metal Dealers Act 1964 s 1(5)(b). Failure to comply with this requirement as to notice is an offence rendering the ex-dealer liable on summary conviction to a fine not exceeding level 1 on the standard scale: s 1(8) (amended by virtue of the Criminal Justice Act 1982 ss 38(1), (6), (8), 46(1), (4)). In the case of a local authority ceasing to carry on business as a scrap metal dealer in its own area, it must thereupon cancel the entry in the register: Scrap Metal Dealers Act 1964 s 1(5)(b), (10).

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LEGISLATIVE CONTROLS/(3) PARTICULAR TRADES/(vii) Scrap Metal Dealers/865. Records of dealings.

865. Records of dealings.

At each place¹ which he occupies as a scrap metal store² a scrap metal dealer³ must⁴ keep a book⁵ in which he must enter certain particulars concerning all scrap metal received there⁶, and all scrap metal either processed⁷ at or dispatched from⁸ that place⁹. As an alternative the dealer may instead keep two books¹⁰, one to contain particulars concerning all scrap metal received at the place, and the other to contain particulars concerning all scrap metal either processed at, or dispatched from, the place; but he may use only one book for each of these purposes at any one place at any one time¹¹. The relevant particulars must be entered immediately after¹² the receipt of the scrap metal at the place in question or, as the case may be, immediately after the processing or despatch of the scrap metal¹³.

Failure to comply¹⁴ with any of these requirements as to records of dealings is an offence¹⁵.

1 As to the meaning of 'place' see PARA 863 note 2.

2 As to the meaning of 'scrap metal store' see PARA 863 note 2.

3 As to the meanings of 'scrap metal dealer' and 'scrap metal' see PARA 863 note 1.

4 This may not apply if he is a person to whom the Scrap Metal Dealers Act 1964 s 3 applies: see PARA 866.

5 This book must be a bound book kept exclusively for the purposes of entering the required particulars (see notes 6, 8) and must be retained by the dealer until the end of a two-year period beginning with the day on which the last entry was made in the book: Scrap Metal Dealers Act 1964 s 2(5). The book need not during the two-year period necessarily be kept at the store: *W Houston & Sons Ltd v Armstrong* [1970] 1 All ER 109, [1969] 1 WLR 1864, DC.

6 In the case of scrap metal received at a place the necessary particulars are as follows (Scrap Metal Dealers Act 1964 s 2(1)(a), (2)(a)-(f)):

- 35 (1) the description and weight of the scrap metal;
- 36 (2) the date and time of its receipt;
- 37 (3) if it is received from another person, the full name and address of that person;
- 38 (4) the price, if any, payable in respect of the receipt of the scrap metal, if that price has been ascertained at the time when the entry in the book relating to it is to be made;
- 39 (5) where head (4) does not apply, the value of the scrap metal at that time as estimated by the dealer; and
- 40 (6) in the case of scrap metal delivered at the place in question by means of a mechanically propelled vehicle bearing a registration mark (whether the vehicle belongs to the dealer or not), the registration mark borne by the vehicle.

The description must be a fair one of the metal in question: *Jenkins v A Cohen & Co Ltd* [1971] 2 All ER 1384, [1971] 1 WLR 1280, DC.

A registration mark borne by a vehicle is any mark displayed on the vehicle of a kind usually displayed on mechanically propelled vehicles for the purpose of complying with the provisions of what is now the Vehicle Excise Registration Act 1994 as to registration marks: Scrap Metal Dealers Act 1964 s 9(6) (amended by the Vehicle Excise and Registration Act 1994 s 63, Sch 3 para 1). As to the registration of vehicles see generally **ROAD TRAFFIC** vol 40(1) (2007 Reissue) PARA 518 et seq.

7 'Processing', in relation to scrap metal, includes melting down and any other process by which the material ceases to be scrap metal, but does not include dismantling or breaking up, and 'processed' is construed accordingly: Scrap Metal Dealers Act 1964 s 2(7).

8 In the case of scrap metal either processed at or dispatched from the place the necessary particulars are as follows (Scrap Metal Dealers Act 1964 s 2(1)(b), (3)(a)-(d)):

- 41 (1) the description and weight of the scrap metal;
- 42 (2) the date of processing, or, as the case may be, dispatch of the scrap metal, and, if processed, the process applied;
- 43 (3) in the case of scrap metal dispatched on sale or exchange, the full name and address of the person to whom it is sold or with whom it is exchanged, and the consideration for which it is sold or exchanged;
- 44 (4) in the case of scrap metal processed or dispatched otherwise than on sale or exchange, the value of the scrap metal immediately before its processing or dispatch as estimated by the dealer.

The description must be a fair one of the metal in question: *Jenkins v A Cohen & Co Ltd* [1971] 2 All ER 1384, [1971] 1 WLR 1280, DC.

9 Scrap Metal Dealers Act 1964 s 2(1)(a), (b). See also note 11.

10 The keeping of each of these books must also conform with the requirements of the Scrap Metal Dealers Act 1964 s 2(4), (5): see text and notes 5, 13.

11 See the Scrap Metal Dealers Act 1964 s 2(1) proviso. Where a place is occupied as a scrap metal store for the purposes of a business carried on in partnership, there must not be kept at that place in compliance with s 2(1) more than one book, or, in accordance with s 2(1) proviso, two books, and the requirements imposed on a person by s 2 in respect of that place, if complied with by a partner, are to be taken to be complied with by that person: s 7(2).

12 'Immediately after' means as soon as the deal is concluded: *Cox v Henderson* (1970) 114 Sol Jo 568, DC.

13 Scrap Metal Dealers Act 1964 s 2(4).

14 This may not apply in the case of a person to whom the Scrap Metal Dealers Act 1964 s 3 applies: see PARA 866.

15 Scrap Metal Dealers Act 1964 s 2(6). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 2(6) (amended by virtue of the Criminal Justice Act 1982 ss 38(1), (6), (8), 46(1), (4)). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

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LEGISLATIVE CONTROLS/(3) PARTICULAR TRADES/(vii) Scrap Metal Dealers/866. Records by
itinerant collectors etc.

866. Records by itinerant collectors etc.

If a registered scrap metal dealer¹ satisfies the local authority² that he carries on or proposes to carry on the business of a scrap metal dealer³ only as part of the business of an itinerant collector⁴, the authority may make an order that the dealer be exempt⁵ from the requirements⁶ as to records of dealings⁷. If such an exemption is granted, when the dealer sells any scrap metal⁸, he must obtain from the purchaser a receipt⁹ which he must keep for two years¹⁰ and which he must be able to produce on demand to any person authorised to require its production¹¹. Any person failing to comply with any of the above requirements is guilty of an offence¹².

Special provisions as to records also apply in the case of a scrap metal dealer who does not occupy any place as a scrap metal store¹³ but who is not exempted by a local authority order from the general requirements as to records¹⁴, or who does occupy a place as a scrap metal store but in relation to whom there is no exempting order in force, and who receives scrap metal for the purposes of his scrap metal business otherwise than at the place he occupies as a scrap metal store and disposes of it in the course of that business without its being received at that place¹⁵.

1 As to the meaning of 'scrap metal dealer' see PARA 863 note 1. Any reference to a person registered as a scrap metal dealer is a reference to a person in respect of whom the particulars required by the Scrap Metal Dealers Act 1964 s 1 (see PARAS 863-864) are for the time being entered in a register maintained by a local authority under s 1: s 9(5).

2 As to the meaning of 'local authority' see PARA 863 note 2.

3 As to the meaning of 'carry on business as a scrap metal dealer' see PARA 863 note 1.

4 'Itinerant collector' means a person regularly engaged in collecting waste materials, and old, broken, worn out or defaced articles, by means of visits from house to house: Scrap Metal Dealers Act 1964 s 9(2). As to the meaning of 'article' see PARA 863 note 1.

5 The exemption afforded by the order remains active only as long as the order remains in force (see the Scrap Metal Dealers Act 1964 s 3(1)), and the order may be revoked at any time by the local authority by which it was made (s 3(3)).

6 In the requirements of the Scrap Metal Dealers Act 1964 s 2: see PARA 865.

7 Scrap Metal Dealers Act 1964 s 3(1). A local authority must not make such an order except after consultation with the chief officer of police for the police area (or, if more than one, for every police area) in which the area of the local authority, or any part of its area, is comprised: s 3(2). As to the meaning of 'chief officer of police' see the Police Act 1996 s 101(1); the Interpretation Act 1978 s 5, Sch 1; and POLICE vol 36(1) (2007 Reissue) PARA 105.

8 As to the meaning of 'scrap metal' see PARA 863 note 1.

9 The receipt must show the weight of the scrap metal comprised in the sale and the aggregate price at which it is sold: Scrap Metal Dealers Act 1964 s 3(1)(a).

10 The two-year period begins with the day on which the receipt was obtained: Scrap Metal Dealers Act 1964 s 3(1)(b).

11 Scrap Metal Dealers Act 1964 s 3(1)(b). The authorised person is any constable: see s 6(1)(b), (3); and PARA 870.

12 Scrap Metal Dealers Act 1964 s 3(4). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 3(4) (amended by virtue of the Criminal Justice Act 1982 ss 38(1), (6), (8), 46(1), (4)). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

13 As to the meaning of 'scrap metal store' see PARA 863 note 2.

14 See the Scrap Metal Dealers Act 1964 s 3(5).

15 See the Scrap Metal Dealers Act 1964 s 3(6).

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867. Additional requirements imposed on convicted dealers.

A person convicted of the offence of carrying on business as a scrap metal dealer¹ without the appropriate particulars relating to him being registered², or, the particulars being registered, of an offence connected with records of dealings³, or any other offence which in the opinion of the convicting court involves dishonesty⁴, may be made subject to additional requirements⁵ by an order⁶ made by the convicting court⁷.

If any such requirement is contravened, the person to whom the order relates is guilty of an offence⁸, and the convicting court may make a further order if it thinks fit⁹.

1 As to the meaning of 'carry on business as a scrap metal dealer'; and as to the meanings of 'scrap metal dealer' and 'scrap metal' see PARA 863 note 1.

2 Scrap Metal Dealers Act 1964 s 4(1)(a), which refers to a contravention of s 1(1) (see PARA 863).

3 If convicted of an offence under the Scrap Metal Dealers Act 1964 s 2 (see PARA 865).

4 Scrap Metal Dealers Act 1964 s 4(1)(b).

5 These are: (1) that at any place occupied by the dealer as a scrap metal store scrap metal may not be received between 6 pm and 8 am (Scrap Metal Dealers Act 1964 s 4(2)(a)); and (2) that all scrap metal received at that place must be kept, in the form in which it is received there, for a period of not less than 72 hours beginning with the time when it is so received (s 4(2)(b)). As to the meanings of 'place' and 'scrap metal store' see PARA 863 note 2.

6 The order must specify a period not exceeding two years for which it is to remain in force (if not revoked); and any such order may at any time, on the application of the person to whom it relates, be revoked by the court which made it: Scrap Metal Dealers Act 1964 s 4(3).

7 Scrap Metal Dealers Act 1964 s 4(1).

8 Scrap Metal Dealers Act 1964 s 4(4). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 4(4) (amended by virtue of the Criminal Justice Act 1982 ss 38(1), (6), (8), 46(1), (4)). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

9 Scrap Metal Dealers Act 1964 s 4(4).

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868. Notification of destruction of motor vehicles.

The following provisions are not in force¹. The Secretary of State² may by regulations provide for the notification by persons registered as scrap metal dealers³ of the destruction of motor vehicles⁴. Such regulations may, in particular, provide for the keeping by such persons, or persons who were formerly such persons, of records of notifications given by them in accordance with such regulations⁵. Such regulations may specify provisions of the regulations as provisions contravention of which is an offence⁶. A person who contravenes⁷ any such provision is guilty of an offence⁸.

1 The Scrap Metal Dealers Act 1964 s 4A is added by the Vehicles (Crime) Act 2001 s 35, as from a day to be appointed. At the date at which this volume states the law, no such day had been appointed.

2 As to the Secretary of State see PARA 802. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 802 note 21.

3 Ie under the Scrap Metal Dealers Act 1964: see PARA 863. As to the meaning of 'scrap metal dealer' see PARA 863 note 1.

4 Scrap Metal Dealers Act 1964 s 4A(1) (as added: see note 1). 'Motor vehicle' means any vehicle whose function is or was to be used on roads as a mechanically propelled vehicle; and 'road' means any highway and any other road to which the public has access: s 4A(7) (as so added). Any power of the Secretary of State to make regulations under s 4A is exercisable by statutory instrument, may be exercised so as to make different provision for different cases or descriptions of case or for different purposes or different areas and includes power to make such incidental, supplementary, consequential, transitory, transitional or saving provision as the Secretary of State considers appropriate: s 4A(5) (as so added). A statutory instrument containing regulations under s 4A is subject to annulment in pursuance of a resolution of either House of Parliament: s 4A(6). See **PARLIAMENT** vol 34 (Reissue) PARA 945.

5 Scrap Metal Dealers Act 1964 s 4A(2) (as added: see note 1).

6 Scrap Metal Dealers Act 1964 s 4A(3) (as added: see note 1).

7 'Contravene', in relation to any provision of regulations, includes fail to comply with it: Scrap Metal Dealers Act 1964 s 4A(7) (as added: see note 1).

8 Scrap Metal Dealers Act 1964 s 4A(4) (as added: see note 1). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 4A(4) (as so added). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

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869. Other offences relating to scrap metal.

Apart from the offences already mentioned¹ it is an offence² for a scrap metal dealer³ to acquire any scrap metal⁴ from a person apparently under the age of 16, whether that person offers the scrap metal on his own or another person's behalf⁵. Any person who, on selling scrap metal to a scrap metal dealer, gives the dealer a false name or address also commits an offence⁶.

1 See PARA 863 et seq.

2 A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 1 on the standard scale: see the Scrap Metal Dealers Act 1964 s 5(1) (amended by virtue of the Criminal Justice Act 1982 ss 38(1), (6), (8), 46(1), (4)). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

3 As to the meaning of 'scrap metal dealer' see PARA 863 note 1.

4 As to the meaning of 'scrap metal' see PARA 863 note 1.

5 Scrap Metal Dealers Act 1964 s 5(1). It is a defence for the dealer to prove that the person from whom he acquired the scrap metal was in fact of or over the age of 16: s 5(1) proviso.

6 Scrap Metal Dealers Act 1964 s 5(2). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 1 on the standard scale: s 5(2) (amended by virtue of the Criminal Justice Act 1982 ss 38(1), (6), (8), 46(1), (4)).

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870. Rights of entry and inspection.

A constable has the right at all reasonable times to enter and inspect a place¹ for the time being entered on a local authority's register² as a place which is occupied by a scrap metal dealer³ as a scrap metal store⁴ or a place which is wholly or partly occupied by him for the purposes of his business⁵. He may also require production of, and may inspect, any scrap metal on the premises, and any book or receipt required to be kept⁶, and may take copies of or extracts from any such book or receipt⁷. An officer of a local authority has the right to enter a place in its area which is not registered to ascertain whether it is being used as a scrap metal store⁸.

A justice of the peace may issue a warrant authorising entry to a place by a constable or an officer of the local authority; and if necessary such entry may be made by force⁹.

A person who obstructs any of these rights of entry or inspection, or fails to produce any book or other document which a person has a right to inspect, commits an offence¹⁰.

1 As to the meaning of 'place' see PARA 863 note 2.

2 Ie entered in a register under the Scrap Metal Dealers Act 1964 s 1 (see PARAS 863-864): s 6(1)(a). As to the meaning of 'local authority' see PARA 863 note 2.

3 As to the meanings of 'scrap metal dealer' and 'scrap metal' see PARA 863 note 1.

4 As to the meaning of 'scrap metal store' see PARA 863 note 2.

5 Scrap Metal Dealers Act 1964 s 6(1)(a). Except under the authority of a warrant granted under s 6(3) (see text and note 9), no person is entitled to enter any place by force: s 6(4).

6 Ie the books and receipts required to be kept under the Scrap Metal Dealers Act 1964 ss 2, 3: see PARAS 865-866.

7 Scrap Metal Dealers Act 1964 s 6(1)(b) (prospectively amended by the Vehicles (Crime) Act 2001 s 43, Schedule para 1(1), (2)(a)-(c) as from a day to be appointed, so as to include any record which the dealer is required to keep by virtue of the Scrap Metal Dealers Act 1964). At the date at which this volume states the law, no such day had been appointed.

8 Scrap Metal Dealers Act 1964 s 6(2). The officer must be authorised in writing by the authority, and must have reasonable grounds for believing that the place is being used as a scrap metal store; he may require entry only at a reasonable time, and may be required to produce his written authority: s 6(2). The officer must not use force to gain entry: see note 5.

9 Scrap Metal Dealers Act 1964 s 6(3). The justice must be satisfied by information on oath that admission to a place specified in the information is reasonably required in order to secure compliance with the provisions of the Scrap Metal Dealers Act 1964, or to ascertain whether those provisions are being complied with, and the constable or officer of the local authority has the right of entry at any time within one month from the date of the warrant: s 6(3) (prospectively amended by the Vehicles (Crime) Act 2001 s 43, Schedule para 1(3) as from a day to be appointed, so as to apply also to compliance with provisions made under the Scrap Metal Dealers Act 1964). At the date at which this volume states the law, no such day had been appointed.

10 Scrap Metal Dealers Act 1964 s 6(5) (prospectively amended by the Vehicles (Crime) Act 2001 s 43, Schedule para 1(4) as from a day to be appointed, so as to refer also to any record which a person has a right to inspect). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 1 on the standard scale: Scrap Metal Dealers Act 1964 s 6(5) (amended by virtue of the Criminal Justice Act 1982 ss 38(1), (6), (8), 46(1), (4)). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

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LEGISLATIVE CONTROLS/(3) PARTICULAR TRADES/(vii) Scrap Metal Dealers/871. Partnerships.

871. Partnerships.

In relation to any person who carries on, or proposes to carry on, the business of a scrap metal dealer¹ in partnership with any other person, the Scrap Metal Dealers Act 1964 has effect as if any reference to the occupation of a place² by a person as a scrap metal store³ were a reference to the occupation of that place for the purposes of the partnership by that person, alone or jointly with a member of the partnership or by another member of the partnership alone⁴.

1 As to the meaning of 'carry on business as a scrap metal dealer'; and as to the meanings of 'scrap metal dealer' and 'scrap metal' see PARA 863 note 1.

2 As to the meaning of 'place' see PARA 863 note 2.

3 As to the meaning of 'scrap metal store' see PARA 863 note 2.

4 Scrap Metal Dealers Act 1964 s 7(1)(a). As to the appropriate particulars which a partnership is required to furnish to a local authority see s 7(1)(b); and PARA 864 note 3; and as to the requirements imposed on a partnership as to the keeping of records see s 7(2); and PARA 865 note 11.

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LEGISLATIVE CONTROLS/(3) PARTICULAR TRADES/(vii) Scrap Metal Dealers/872. Repeals.

872. Repeals.

The Secretary of State¹ may by order² repeal any provision of a local Act not repealed by the Scrap Metal Dealers Act 1964³, and may by that order make such amendments of that or any other local Act as appear to him to be necessary in consequence of the repeal, and any transitional provision as appears to him to be necessary or expedient in connection with the matter⁴.

1 As to the Secretary of State see PARA 802. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 802 note 21.

2 The power to make orders is exercisable by statutory instrument, any such instrument being subject to annulment in pursuance of a resolution of either House of Parliament: Scrap Metal Dealers Act 1964 s 10(4). See **PARLIAMENT** vol 34 (Reissue) PARA 945.

3 See the Scrap Metal Dealers Act 1964s 10(2), Schedule Pt II (s 10(2) amended by the Statute Law (Repeals) Act 2004).

4 Scrap Metal Dealers Act 1964 s 10(3). The Secretary of State must first consult any local authority or county council appearing to him to be concerned, and the provision must appear to him to be unnecessary having regard to the provisions of the Scrap Metal Dealers Act 1964 or to be inconsistent with the provisions of that Act: s 10(3). As to the meaning of 'local authority' see PARA 863 note 2.

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(viii) Hairdressers and Barbers

A. IN GENERAL

873. Registration in London.

The council of a London borough or the Common Council of the City of London¹ may by resolution appoint a day² after which no person may carry on the business³ of a hairdresser or barber on any premises within the borough or, as the case may be, the City unless he is registered by the council in respect of those premises⁴. The council must register an applicant who provides particulars of his name and residence and the premises in respect of which he desires to be registered, and must issue to him a certificate of registration⁵. He must keep a copy of this certificate prominently displayed in the premises along with a copy of any relevant byelaws⁶.

1 The Common Council is included by virtue of the Greater London Council (General Powers) Act 1967 s 20(1).

2 'Appointed day' in relation to a borough, or as the case may be, the City, means such day as may be fixed by resolution of the council: Greater London Council (General Powers) Act 1967 s 21(7)(a). The council must cause to be published in a local newspaper circulating in the borough or the City notice of the passing of the resolution and of the day fixed by it, and of the general effect of the provisions of s 21(1)-(6) (see text and notes 3-6), and the day so fixed must not be earlier than the expiration of one month from the date of publication of the notice: s 21(7)(b). Either a copy of this newspaper containing any such notice, or a certified reproduction of part of it bearing the date of its publication and containing the notice, is evidence of the publication of the notice and of the date of publication: s 21(8).

3 A person is not deemed to carry on the business of a hairdresser or barber on any premises solely by reason that he visits those premises only by prior appointment with a customer who resides at or is an inmate of them for the purpose of attending to that customer: Greater London Council (General Powers) Act 1967 s 21(1) proviso.

4 Greater London Council (General Powers) Act 1967 s 21(1), (7)(a). If any person carries on business in contravention of s 21(1), he is liable on summary conviction to a fine not exceeding level 3 on the standard scale, and a daily fine not exceeding £5 for each day on which an offence is continued after conviction: ss 20(1), 21(3) (s 21(3) amended by the Greater London Council (General Powers) Act 1983 s 3, Schedule; and by virtue of the Criminal Justice Act 1982 s 46(1), (4)). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

5 See the Greater London Council (General Powers) Act 1967 s 21(2). The obligation upon the council to register an applicant does not apply where planning permission is required for the carrying on of the business and has not been granted: see s 21(2) proviso.

6 See the Greater London Council (General Powers) Act 1967 s 21(4). Relevant byelaws are those made under the Public Health Act 1961 s 77, for the purpose of securing cleanliness of premises, instruments, equipment, clothing etc in a hairdresser's or barber's business: see the Greater London Council (General Powers) Act 1967 s 21(4); and PARA 874. Failure to display his certificate renders a person liable on summary conviction to a fine not exceeding level 2 on the standard scale and a daily fine not exceeding 50p: s 21(4) (amended by the Greater London Council (General Powers) Act 1983 s 3, Schedule; and by virtue of the Criminal Justice Act 1982 s 46(1), (4)). Where an offence punishable under the Greater London Council (General Powers) Act 1967 s 21 which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in such capacity, he as well as the body corporate is deemed to be guilty of that offence: s 21(5). The Public Health Act 1936 ss 287, 288, 341 (which relate respectively to powers of entry, penalties for obstruction and the application of the Act

to Crown property: see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARAS 108, 114-115), have effect as if the Greater London Council (General Powers) Act 1967 s 21 was contained in the Public Health Act 1936: Greater London Council (General Powers) Act 1967 s 21(6).

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874. Regulation by local authorities.

A local authority¹ may make byelaws for securing the cleanliness of premises² on which a hairdresser's or barber's business is carried on and the instruments, towels, materials and equipment used in that business, and the cleanliness of the hairdressers or barbers working in those premises in regard to themselves and their clothing³. The Secretary of State⁴ is the confirming authority as respects these byelaws⁵, and it is the duty of the local authority to enforce the byelaws it makes⁶. For the purpose of enforcing the byelaws the local authority has power of entry into premises⁷.

1 'Local authority' in this context means the council of a district or London borough, the Common Council of the City of London, the Sub-Treasurer of the Inner Temple or the Under Treasurer of the Middle Temple, and includes the Council of the Isles of Scilly: Public Health Act 1961 s 2(3) (amended by the London Government Act 1963 s 40(2), Sch 11 Pt I para 33; and the Local Government Act 1972 s 272(1), Sch 30).

2 'Premises' includes messuages, buildings, land, easements and hereditaments of any tenure: Public Health Act 1936 s 343(1); definition applied by the Public Health Act 1961 s 1(4).

3 Public Health Act 1961 s 77(1). A hairdresser registered by a London borough council or the Common Council must display a copy of any such byelaws on his premises: see PARA 873 text and note 6.

4 In the Secretary of State for Environment, Food and Rural Affairs: see the Secretary of State for the Environment Order 1970, SI 1970/1681, arts 2, 6; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 452 et seq. As to the Secretary of State see PARA 802. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 802 note 21.

5 Public Health Act 1961 s 77(3).

6 Public Health Act 1961 s 77(1).

7 See the Public Health Act 1961 s 77(2), applying the Public Health Act 1936 s 287: see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 114.

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B. VOLUNTARY REGISTRATION

875. The Hairdressing Council.

A body known as the Hairdressing Council is established in relation to the voluntary registration of hairdressers¹. It consists of 15 members², comprising:

- 108 (1) four employers or self-employed persons engaged in hairdressing³ who are registered persons⁴;
- 109 (2) four employees engaged in hairdressing who are registered persons⁵;
- 110 (3) one person appointed by the President of the British Medical Association⁶;
- 111 (4) one person appointed by the President of the Royal College of Physicians of London⁷; and
- 112 (5) five persons appointed by the members appointed under heads (1) and (2) above from among persons appearing to have wide experience of and shown capacity in industry, commerce, administration, finance or the practice of law or to have in some other respect special knowledge or experience which would be of value to the council in the exercise and performance of its functions⁸.

The council may do anything calculated to facilitate the proper discharge of its functions⁹. Its powers may be exercised notwithstanding any vacancy¹⁰, and proceedings are not invalidated by any defect in the appointment of a member¹¹. The council may make regulations with regard to its meeting and procedure¹².

The council must keep audited accounts of all sums received or paid by it¹³. It must set up an investigating committee and a disciplinary committee¹⁴, and may appoint a registrar¹⁵ and other officers and servants¹⁶.

It may pay fees for attendance, and travelling and other allowances to members¹⁷, pay remuneration, pensions and gratuities to officers and servants, and provide or maintain superannuation schemes for them¹⁸. The council has no powers, however, as regards negotiating questions of service, charges, wages or conditions of employment of hairdressers as between employer and employees or otherwise¹⁹.

1 Hairdressers (Registration) Act 1964 s 1(1). The council is constituted in accordance with Sch 1 Pt I (paras 1-3); and the supplementary provisions contained in Sch 1 Pt II (paras 4-12) (relating to constitution, term of office, validity of proceedings), have effect with respect to the council: s 1(2). The council is a body corporate with perpetual succession and a common seal: Sch 1 para 4.

2 As to the tenure of office of members see the Hairdressers (Registration) Act 1964 Sch 1 paras 6, 7 (Sch 1 para 6 amended by the Statute Law (Repeals) Act 2004). As to the first members appointed see Sch 1 paras 2, 5, 6(1) (Sch 1 paras 2, 5 repealed). A member may resign at any time by notice addressed to the registrar (as to whom see text and note 15): Sch 1 para 8. A person appointed to fill a casual vacancy holds office during the remainder of the term in office of the person whom he has replaced (Sch 1 para 9(1)); a vacancy other than a casual vacancy must be filled before the date on which the vacancy will occur (Sch 1 para 9(2)).

3 'Hairdressing' means shaving, cutting, shampooing, tinting, dyeing, bleaching, waving, curling, straightening, setting, or dressing of the hair, upon the scalp or face, with or without the aid of any apparatus or appliance, preparation or substance; and the hand or vibro massage of the scalp or face: Hairdressers (Registration) Act 1964 s 15.

4 Hairdressers (Registration) Act 1964 Sch 1 para 1(1) (amended by the Statute Law (Repeals) Act 2004). Two persons must be appointed by the National Hairdressers' Federation and two by the Incorporated Guild of Hairdressers, Wigmakers and Perfumers: Hairdressers (Registration) Act 1964 Sch 1 para 1(1). Before those bodies make appointments they must consult together and ensure that not less than two of the appointees are engaged in ladies' hairdressing: Sch 1 para 3(1). 'Registered person' means a person who is registered under s 3 (see PARA 877): s 15.

5 Hairdressers (Registration) Act 1964 Sch 1 para 1(2) (amended by the Statute Law (Repeals) Act 2004). These persons must be appointed by the Union of Shop, Distributive and Allied Workers: Hairdressers (Registration) Act 1964 Sch 1 para 1(2). Not less than two of these appointees must be engaged in ladies' hairdressing: Sch 1 para 3(2).

6 Hairdressers (Registration) Act 1964 Sch 1 para 1(3).

7 Hairdressers (Registration) Act 1964 Sch 1 para 1(4). As to the Royal College of Physicians of London see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 64.

8 Hairdressers (Registration) Act 1964 Sch 1 para 1(5) (amended by the Statute Law (Repeals) Act 2004). 'Functions' includes powers and duties: Hairdressers (Registration) Act 1964 s 15.

9 Hairdressers (Registration) Act 1964 Sch 1 para 10(1).

10 However, no business may be conducted unless there are at least five members present: Hairdressers (Registration) Act 1964 Sch 1 para 12.

11 Hairdressers (Registration) Act 1964 Sch 1 para 10(3).

12 Hairdressers (Registration) Act 1964 Sch 1 para 11.

13 Hairdressers (Registration) Act 1964 s 13(1). The accounts are audited by auditors appointed by the council: s 13(1). No person may be appointed as auditor unless he is eligible for appointment as a statutory auditor under the Companies Act 2006 Pt 42 (ss 1209-1264) (see **COMPANIES** vol 15 (2009) PARA 958): Hairdressers (Registration) Act 1964 s 13(2) (amended by SI 1991/1997; and SI 2008/948). Copies of the council's accounts must be furnished to any person on application and on payment of such reasonable sum as the council may determine: Hairdressers (Registration) Act 1964 s 13(3).

14 See the Hairdressers (Registration) Act 1964 s 8; and PARA 879.

15 Hairdressers (Registration) Act 1964 s 12(1), (2). The registrar holds and vacates office in accordance with the terms of his appointment: s 12(1).

16 See the Hairdressers (Registration) Act 1964 Sch 1 para 10(2)(a).

17 See the Hairdressers (Registration) Act 1964 Sch 1 para 10(2)(b).

18 See the Hairdressers (Registration) Act 1964 Sch 1 para 10(2)(c), (d).

19 Hairdressers (Registration) Act 1964 s 14.

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LEGISLATIVE CONTROLS/(3) PARTICULAR TRADES/(viii) Hairdressers and Barbers/B.
VOLUNTARY REGISTRATION/876. Register of hairdressers.

876. Register of hairdressers.

The Hairdressing Council¹ must maintain a register of hairdressers², which it must publish as often as it thinks fit³. If the register is not published in any year the council must publish within that year any alterations in the register which have been made since its last publication⁴.

1 As to the council see PARA 875.

2 Hairdressers (Registration) Act 1964 s 2 (amended by the Statute Law (Repeals) Act 2004). That provision before its partial repeal also provided for the establishment of the register at the time when the Act was passed. The register must contain the names, addresses, qualifications and such other particulars as may be prescribed of all persons who are entitled under the provisions of the Act to be registered and who apply in the prescribed manner to be so registered, and the form of hairdressing which such persons are qualified to practise: Hairdressers (Registration) Act 1964 s 2. 'Prescribed' means prescribed by rules under the Act: s 15. As to the meaning of 'hairdressing' see PARA 875 note 3.

The council may make rules with respect to the form and keeping of the register and the making of entries, alterations and corrections in it and, in particular:

- 45 (1) regulating the making of applications for registration and the supporting evidence (s 6(1)(a));
- 46 (2) providing for the notification to the council of any change in the particulars entitling a person to be registered (s 6(1)(b));
- 47 (3) prescribing fees for entry in, restoration to, and retention in, the register (s 6(1)(c), (d));
- 48 (4) authorising the registrar of the council to refuse to enter a name in or restore it to the register until the fee has been paid and to remove a name on non-payment of the retention fee after prescribed notices and warnings (s 6(1)(e));
- 49 (5) prescribing anything required or authorised to be prescribed by the provisions of the Act relating to the register (s 6(1)(f)).

Rules under s 6 which provide for the erasure of a name from the register on failure to pay a fee must provide for its restoration to the register on the making of the prescribed application in that behalf and on payment of that fee and any additional fee prescribed in respect of the restoration: s 6(2). Rules which prescribe fees may provide for the charging of different fees in different classes of cases: s 6(3).

Rules made under the Hairdressers (Registration) Act 1964 are not made by statutory instrument and are not dealt with in this title.

3 Hairdressers (Registration) Act 1964 s 7(1) (amended by the Statute Law (Repeals) Act 2004), which before its partial repeal additionally provided for the initial publication of the register within six months of 1 January 1966.

4 Hairdressers (Registration) Act 1964 s 7(2).

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877. Qualifications for registration.

A person is entitled¹ to be registered by the Hairdressing Council² if he applies for registration and satisfies the council³ that he has:

- 113 (1) served a period of apprenticeship⁴, or attended a course of training approved⁵ by it conducted at an institution so approved, or partly at one such institution and partly at another or others⁶; and
- 114 (2) that he has attained a reasonable and sufficient standard to qualify him to practise the form of hairdressing⁷ in respect of which the application was made⁸.

On registering any person the council must issue to him a certificate of registration⁹.

1 Is subject to the provisions of the Hairdressers (Registration) Act 1964 and any rules made under s 6 (see PARA 876 note 2): s 3(1).

2 As to the council see PARA 875.

3 Hairdressers (Registration) Act 1964 s 3(1) (amended by the Statute Law (Repeals) Act 2004).

4 Hairdressers (Registration) Act 1964 s 3(1)(a)(i).

5 Is approved under the Hairdressers (Registration) Act 1964 s 4: see PARA 878.

6 Hairdressers (Registration) Act 1964 s 3(1)(a)(ii).

7 As to the meaning of 'hairdressing' see PARA 875 note 3.

8 Hairdressers (Registration) Act 1964 s 3(1)(b).

9 Hairdressers (Registration) Act 1964 s 3(3).

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878. Approval of courses, qualifications and institutions.

The Hairdressing Council¹ may approve:

- 115 (1) any course of training which it considers is designed to confer sufficient knowledge and skill for the practice of hairdressing² on persons completing it³;
- 116 (2) any qualification which, as a result of an examination taken in conjunction with an approved course, is granted to candidates reaching a standard indicating in the council's opinion sufficient knowledge and skill to practise hairdressing⁴; and
- 117 (3) any institution it considers properly organised and equipped for conducting the whole or any part of an approved course⁵.

The council may refuse its approval or withdraw an approval previously given⁶.

The power of approval conferred on the council includes power to approve a course of training prepared by it and conducted either under arrangements made by it or otherwise, and a qualification awarded by it as a result of an examination held under arrangements made by it⁷. If the council withdraws its approval this does not prejudice the registration or entitlement to registration of any person who was registered or entitled to registration by virtue of that approval immediately before it was withdrawn⁸.

It is the council's duty to keep itself informed of the nature of the instruction given at approved institutions to persons attending approved courses and the examinations the passing of which may be prescribed⁹ by it as being a condition of registration¹⁰.

1 As to the council see PARA 875.

2 As to the meaning of 'hairdressing' see PARA 875 note 3.

3 Hairdressers (Registration) Act 1964 s 4(1)(a).

4 Hairdressers (Registration) Act 1964 s 4(1)(b).

5 Hairdressers (Registration) Act 1964 s 4(1)(c).

6 Hairdressers (Registration) Act 1964 s 4(1). The council must serve on the body or person affected notice of the giving, refusal or withdrawal of such an approval: s 4(1). Any reference in s 4 to a body or person affected, in relation to an approval, is a reference to the body or person who applied for the approval: s 4(4).

7 Hairdressers (Registration) Act 1964 s 4(2)(a), (b).

8 Hairdressers (Registration) Act 1964 s 4(3).

9 As to the meaning of 'prescribed' see PARA 876 note 2.

10 Hairdressers (Registration) Act 1964 s 5.

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879. Investigating and disciplinary committees.

The Hairdressing Council¹ must set up an investigating committee and a disciplinary committee². The investigating committee is charged with the duty of conducting a preliminary investigation into any case where it is alleged that a person registered by the council is liable to have his name removed from the register³ and of deciding whether the case should be referred to the disciplinary committee⁴. The disciplinary committee is charged with the duty of considering and determining any case referred to it by the investigating committee and any other case of which the disciplinary committee has cognisance⁵.

Rules regulating the membership of each committee, the times and places of meetings, quorum and mode of summoning members of the disciplinary committee, are to be made by the council, but a person is not eligible for membership of either committee unless he is a member of the council⁶. The rules must ensure that no person who acted as a member of the investigating committee in respect of any case acts as a member of the disciplinary committee with respect to that case⁷.

The council must make rules as to the procedure to be followed and the rules of evidence to be observed in proceedings before the disciplinary committee⁸. To advise this committee on questions of law there must in all proceedings before it be an assessor who must be a person who has a ten year general qualification⁹.

1 As to the council see PARA 875.

2 Hairdressers (Registration) Act 1964 s 8(1).

3 'Register' means the register of hairdressers to be maintained in pursuance of the Hairdressers (Registration) Act 1964 s 2 (see PARA 876): s 15.

4 Hairdressers (Registration) Act 1964 s 8(1)(a).

5 Hairdressers (Registration) Act 1964 s 8(1)(b). The committee has cognisance of other cases by virtue of s 9(3): see PARA 880.

6 Hairdressers (Registration) Act 1964 s 8(2), Sch 2 para 1(1). Rules under the Hairdressers (Registration) Act 1964 are not made by statutory instrument, and are not dealt with in this work.

7 Hairdressers (Registration) Act 1964 Sch 2 para 1(2).

8 Hairdressers (Registration) Act 1964 Sch 2 para 2(1). In particular, under Sch 2 para 2(1)(a)-(e), the rules must:

50 (1) secure that notice of the proceedings is given at the specified time and in the specified manner, to the person alleged to be liable to have his name removed from the register;

51 (2) determine who, in addition to that person, is to be a party to the proceedings;

52 (3) secure that any party may be heard by the committee;

53 (4) enable any party to be represented by counsel or solicitor or (if the rules so provide and the party so elects) by a person of some other specified description; and

54 (5) require proceedings before the committee to be held in public except so far as may be provided by the rules.

As respects proceedings for the registration of a person whose name was previously removed from the register by direction of the disciplinary committee, the council has power to make rules with respect to all or any of the matters mentioned in heads (1)-(5) above, but is not required to do so; and separate rules may be made as respects such proceedings: Sch 2 para 2(2).

9 Hairdressers (Registration) Act 1964 Sch 2 para 3(1) (amended by the Courts and Legal Services Act 1990 s 72(1), Sch 10 para 23). As to the meaning of a 'ten year general qualification' see the Courts and Legal Services Act 1990 s 71; and **COURTS** vol 10 (Reissue) PARA 530. The power of appointing an assessor for the disciplinary committee is exercisable by the council, but if no assessor appointed by it is available to act in any particular proceedings the committee may itself appoint an assessor: Hairdressers (Registration) Act 1964 Sch 2 para 3(2). Except in the case of an assessor so appointed by the committee, an assessor may be appointed under this provision either generally or for any particular proceedings or class of proceedings, and holds and vacates office in accordance with the terms of the instrument under which he is appointed: Sch 2 para 3(3).

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880. Removal from the register.

The disciplinary committee¹ may direct that a person's name be removed from the register² where he is convicted by any court in the United Kingdom³ of a criminal offence which in the committee's opinion renders him unfit to be registered, or it judges him guilty of serious negligence in any professional respect, or it is satisfied that his name has been fraudulently entered⁴. It must serve him with notice⁵ of the direction⁶. Where the name of any person is removed from the register, he must deliver up to the Hairdressing Council⁷ his certificate of registration within seven days of receiving notice of the removal⁸.

A person whose name is removed is not entitled to be registered again except in pursuance of a direction given by the committee on his application⁹.

1 As to this committee see PARA 879.

2 As to the meaning of 'register' see PARA 879 note 3.

3 As to the meaning of 'United Kingdom' see PARA 806 note 7.

4 Hairdressers (Registration) Act 1964 s 9(1).

5 'Notice' means notice in writing: Hairdressers (Registration) Act 1964 s 11(1). Any notice authorised or required to be served under the Hairdressers (Registration) Act 1964 may, without prejudice to any other method of service but subject to any provision to the contrary in rules under the Act, be served by post; and for the purpose of the application of s 11(2) to what is now the Interpretation Act 1978 s 7 (which relates to service by post), the proper address of a person to whose registration such a notice relates is his address on the register: Hairdressers (Registration) Act 1964 s 11(2).

6 Hairdressers (Registration) Act 1964 s 9(2).

7 As to the council see PARA 875.

8 Hairdressers (Registration) Act 1964 s 10.

9 Hairdressers (Registration) Act 1964 s 9(3). A direction under s 9 for the removal of a person's name from the register may prohibit an application under s 9(3) by that person until the expiration of a specified period from the date of the direction (and, where he has duly made such an application, from the date of his last application): s 9(3).

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(ix) Employment Agencies

881. Meaning of 'employment agency' and 'employment business'.

'Employment agency' means the business (whether or not carried on with a view to profit and whether or not carried on in conjunction with any other business) of providing services¹ (whether by the provision of information or otherwise) for the purpose of finding persons employment with employers² or of supplying employers with persons for employment by them³.

'Employment business' means the business (whether or not carried on with a view to profit and whether or not carried on in conjunction with any other business) of supplying persons (being persons in the employment of the person carrying on the business) to act for and under the control of other persons in any capacity⁴.

However, neither 'employment agency' nor 'employment business' includes any arrangements, services, functions or business to which the Employment Agencies Act 1973 does not apply by virtue of certain specified exemptions⁵.

1 This reference to providing services does not include a reference: (1) to publishing a newspaper or other publication unless it is published wholly or mainly for the purpose mentioned in the text; (2) to the display by any person of advertisements on premises occupied by him otherwise than for that purpose; or (3) to providing a programme service within the meaning of the Broadcasting Act 1990 (see **TELECOMMUNICATIONS AND BROADCASTING** vol 45(1) (2005 Reissue) PARA 328); Employment Agencies Act 1973 s 13(4)(a)-(c) (amended by the Cable and Broadcasting Act 1984 s 57, Sch 5; and subsequently by the Broadcasting Act 1990 s 203(1), Sch 20 para 18).

2 'Employment' includes: (1) employment by way of a professional engagement or otherwise under a contract for services; (2) the reception in a private household of a person under an arrangement by which that person is to assist in the domestic work of the household in consideration of receiving hospitality and pocket money or hospitality only: Employment Agencies Act 1973 s 13(1). 'Worker' and 'employer' must be construed accordingly: s 13(1).

3 Employment Agencies Act 1973 s 13(1), (2) (s 13(2) amended by the Employment Relations Act 1999 s 31, Sch 7 paras 1, 7).

4 Employment Agencies Act 1973 s 13(1), (3). Where elements of control are divided between different persons, the natural meaning of control is the predominant practical control over what the transferred employee does: *Accenture Services Ltd v Revenue and Customs Comrs; Barclays Bank plc v Revenue and Customs Comrs* [2009] EWHC 857 (Admin), [2009] STC 1503, [2009] All ER (D) 223 (Apr) (staff supplied had not come under the predominant control of any person other than the agency).

5 Employment Agencies Act 1973 s 13(1). These exceptions are those that arise by virtue of s 13(7): see PARA 883.

Halsbury's Laws of England/TRADE AND INDUSTRY (VOLUME 97 (2010) 5TH EDITION)/2. LEGISLATIVE CONTROLS/(3) PARTICULAR TRADES/(ix) Employment Agencies/882. Prohibition orders.

882. Prohibition orders.

On application by the Secretary of State¹, an employment tribunal may by order prohibit a person from carrying on, or being concerned with the carrying on of any employment agency or employment business, or any specified description of employment agency or employment business². Such an order (a 'prohibition order') may either prohibit a person from engaging in an activity altogether or prohibit him from doing so otherwise than in accordance with specified conditions³. A prohibition order must be made for a period beginning with the date of the order and ending on a specified date, or on the happening of a specified event, and in either case, not more than ten years later⁴.

An employment tribunal may not make a prohibition order in relation to any person unless it is satisfied that he is, on account of his misconduct or for any other sufficient reason, unsuitable to do what the order prohibits⁵.

Any person who, without reasonable excuse, fails to comply with a prohibition order is guilty of an offence⁶.

On application by the person to whom a prohibition order applies, an employment tribunal may vary or revoke the order if it is satisfied that there has been a material change of circumstances since the order was last considered⁷. On such an application a tribunal may not so vary a prohibition order as to make it more restrictive⁸.

An appeal lies to the Employment Appeal Tribunal on a question of law arising from any decision of, or arising in proceedings before, an employment tribunal in relation to the making of a prohibition order or the disposition of an application for variation or revocation of a prohibition order⁹.

1 As to the Secretary of State see PARA 802. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 802 note 21.

2 Employment Agencies Act 1973 s 3A(1) (ss 3A-3D added by the Deregulation and Contracting Out Act 1994 s 35, Sch 10 para 1(3); Employment Agencies Act 1973 s 3A(1), (4), (5), (6) amended by virtue of the Employment Rights (Dispute Resolution) Act 1998 s 1(2)(a)). 'Specified', in relation to a prohibition order, means specified in the order: Employment Agencies Act 1973 s 3A(9). As to the meanings of 'employment agency' and 'employment business' see PARA 881.

3 Employment Agencies Act 1973 s 3A(2) (as added: see note 2).

4 Employment Agencies Act 1973 s 3A(3) (as added: see note 2).

5 Employment Agencies Act 1973 s 3A(4) (as added and amended: see note 2), which is expressed to be subject to s 3A(5), (6). For these purposes, where an employment agency or employment business has been improperly conducted, each person who was carrying on, or concerned with the carrying on of, the agency or business at the time, is deemed to have been responsible for what happened unless he can show that it happened without his connivance or consent and was not attributable to any neglect on his part: s 3A(7) (as so added).

A tribunal may make a prohibition order in relation to a body corporate if it is satisfied that: (1) any director, secretary, manager or similar officer of the body corporate; (2) any person who performs on behalf of the body corporate the functions of a director, secretary, manager or similar officer; or (3) any person in accordance with whose directions or instructions the directors of the body corporate are accustomed to act, is unsuitable, on account of his misconduct or for any other sufficient reason, to do what the order prohibits: s 3A(5) (as so added and amended). A person is not deemed to fall within head (3) by reason only that the directors act on advice

given by him in a professional capacity: s 3A(8) (as so added). 'Director', in relation to a body corporate whose affairs are controlled by its members, means a member of the body corporate: s 3A(9) (as so added).

A tribunal may make a prohibition order in relation to a partnership if it is satisfied that any member of the partnership, or any manager employed by the partnership, is unsuitable, on account of his misconduct or for any other sufficient reason, to do what the order prohibits: s 3A(6) (as so added and amended).

6 Employment Agencies Act 1973 s 3B (as added: see note 2). A person guilty of such an offence is liable, on conviction on indictment, to a fine and, on summary conviction, to a fine not exceeding the statutory maximum: s 3B (as so added; amended by the Employment Act 2008 s 15). Where any offence committed under the Employment Agencies Act 1973 by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or similar officer, or a person who was purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and is liable to be proceeded against and punished accordingly: s 11(1) (numbered as such by the Employment Act 2008 s 17(a)). As to the statutory maximum see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 140.

The court in which a person is convicted of an offence under the Employment Agencies Act 1973 may order him to pay to the Secretary of State a sum which appears to the court not to exceed the costs of the investigation which resulted in the conviction: s 11B (added by the Employment Relations Act 1999 s 31, Sch 7 paras 1, 5).

7 Employment Agencies Act 1973 s 3C(1) (as added (see note 2); s 3C(1)-(4) amended by virtue of the Employment Rights (Dispute Resolution) Act 1998 s 1(2)(a)). The Secretary of State is a party to any proceedings before a tribunal with respect to such an application, and is entitled to appear and be heard accordingly: Employment Agencies Act 1973 s 3C(3) (as so added and amended).

When making a prohibition order or disposing of an application under s 3C, an employment tribunal may, with a view to preventing the making of vexatious or frivolous applications, by order prohibit the making of such an application, or further application, in relation to the prohibition order before such date as the tribunal may specify: s 3C(4) (as so added and amended).

8 Employment Agencies Act 1973 s 3C(2) (as added and amended: see note 7).

9 Employment Agencies Act 1973 s 3D(1) (as added (see note 2); s 3D(1), (2) amended by virtue of the Employment Rights (Dispute Resolution) Act 1998 s 1(2)(a)). No other appeal lies from a decision of an employment tribunal under the Employment Agencies Act 1973 s 3A or s 3C and the Tribunals and Inquiries Act 1992 (appeals from certain tribunals to the High Court: see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 72) does not apply to proceedings before an employment tribunal under those provisions: Employment Agencies Act 1973 s 3D(2) (as so added and amended).

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883. Exemptions from the Employment Agencies Act 1973.

The following businesses, agencies and services are exempted from the application of the Employment Agencies Act 1973:

- 118 (1) any business which is carried on exclusively for the purpose of obtaining employment¹ for persons formerly in the armed services or persons released from a custodial sentence passed by a criminal court in the United Kingdom, the Channel Islands or the Isle of Man²;
- 119 (2) services which are ancillary to the letting on hire of any aircraft, vessel, vehicle, plant or equipment³;
- 120 (3) the exercise by a local authority⁴ a police authority⁵ or a joint authority⁶ of any of its functions⁷;
- 121 (4) the exercise by a joint waste authority⁸ established for an area in England of any of its functions⁹;
- 122 (5) the exercise by an economic prosperity board¹⁰ or a combined authority¹¹ of any of its functions¹²;
- 123 (6) the exercise by the Metropolitan Police Authority of any of its functions¹³;
- 124 (7) the exercise by the Broads Authority of any of its functions¹⁴;
- 125 (8) the exercise by a national park authority of any of its functions¹⁵;
- 126 (9) the exercise by the London Fire and Emergency Planning Authority of any of its functions¹⁶;
- 127 (10) services provided by any organisation¹⁷ of employers¹⁸ or of workers¹⁹ for its members²⁰;
- 128 (11) services provided in pursuance of arrangements made or a direction given under the Employment and Training Act 1973²¹;
- 129 (12) services provided by an appointments board or service controlled by one or more universities²²; and
- 130 (13) any prescribed²³ business or service, or prescribed class of business or service or business or service carried on or provided by prescribed persons or classes of person²⁴.

1 As to the meaning of 'employment' see PARA 881 note 2.

2 See the Employment Agencies Act 1973 s 13(7)(a) (amended by the Criminal Justice Act 1988 s 123(6), Sch 8 Pt I para 7). The business must be certified annually by or on behalf of the appropriate board of the Defence Council or the Secretary of State, as the case may be: see the Employment Agencies Act 1973 s 13(7)(a). As to the meaning of 'United Kingdom' see PARA 806 note 7. As to the Secretary of State see PARA 802. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 802 note 21.

3 Employment Agencies Act 1973 s 13(7)(d).

4 'Local authority', in relation to England, means a county council, the Common Council of the City of London, a district council or a London borough council and in relation to Wales, means a county council or a county borough council: Employment Agencies Act 1973 s 13(1) (definition amended by the Local Government Act 1985 s 102, Sch 17; and the Local Government (Wales) Act 1994 s 66(6), (8), Sch 16 para 41, Sch 18).

5 ie a police authority established under the Police Act 1996 s 3: see **POLICE**.

6 Is a joint authority established under the Local Government Act 1985 Pt IV (ss 23-42): see **LOCAL GOVERNMENT** vol 69 (2009) PARA 47 et seq.

7 Employment Agencies Act 1973 s 13(7)(f) (amended by the Local Government Act 1985 s 84, Sch 14 para 50; the Education Reform Act 1988 s 237(2), Sch 13 Pt I; the Police and Magistrates' Courts Act 1994 s 43, Sch 4 Pt II para 50; the Police Act 1996 s 103, Sch 7 para 1(2)(i); the Police Act 1997 s 134(1), Sch 9 para 26; and the Serious Organised Crime and Police Act 2005 ss 59, 174(2), Sch 4 para 19, Sch 17 Pt 2).

8 Is a joint waste authority established under the Local Government and Public Involvement in Health Act 2007 s 207 (joint waste authorities): see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 621.

9 Employment Agencies Act 1973 s 13(7)(fza) (added by the Local Government and Public Involvement in Health Act 2007 s 209(2), Sch 13 Pt 2 para 30).

10 Is an economic prosperity board established under the Local Democracy, Economic Development and Construction Act 2009 s 88: see PARA 997 et seq.

11 Is a combined authority established under the Local Democracy, Economic Development and Construction Act 2009 s 103: see PARA 1002 et seq.

12 Employment Agencies Act 1973 s 13(7)(fzb), (fzc) (added by the Local Democracy, Economic Development and Construction Act 2009 s 119, Sch 6 para 40).

13 Employment Agencies Act 1973 s 13(7)(fa) (added by the Greater London Authority Act 1999 s 325, Sch 27 para 37).

14 Employment Agencies Act 1973 s 13(7)(ff) (added by the Norfolk and Suffolk Broads Act 1988 s 21, Sch 6 para 11). As to the Broads Authority see **WATER AND WATERWAYS** vol 101 (2009) PARA 734.

15 Employment Agencies Act 1973 s 13(7)(fg) (added by the Environment Act 1995 s 78, Sch 10 para 11). As to national park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq.

16 Employment Agencies Act 1973 s 13(7)(fh) (added by the Greater London Authority Act 1999 s 328, Sch 29 Pt I para 22). As to the London Fire and Emergency Planning Authority see **FIRE SERVICES** vol 18(2) (Reissue) PARA 17; **LONDON GOVERNMENT**.

17 'Organisation' includes an association of organisations: Employment Agencies Act 1973 s 13(1).

18 'Organisation of employers' means an organisation which consists wholly or mainly of employers and whose principal objects include the regulation of relations between employers and workers or organisations of workers: Employment Agencies Act 1973 s 13(1). As to the meanings of 'employer' and 'worker' see PARA 881 note 2.

19 'Organisation of workers' means an organisation which consists wholly or mainly of workers and whose principal objects include the regulation of relations between workers and employers or organisations of employers: Employment Agencies Act 1973 s 13(1). The organisation must genuinely be an organisation of workers, not merely a co-operative employment agency: see *McCabe v Edwards* [1981] ICR 468, DC.

20 Employment Agencies Act 1973 s 13(7)(g).

21 Employment Agencies Act 1973 s 13(7)(ga) (added by the Trade Union Reform and Employment Rights Act 1993 s 49(2), Sch 8 para 4). This exception applies to arrangements made or a direction given under the Employment and Training Act 1973 s 10: see **EMPLOYMENT** vol 40 (2009) PARA 569.

22 Employment Agencies Act 1973 s 13(7)(h).

23 'Prescribed' means prescribed by regulations made under the Employment Agencies Act 1973 by the Secretary of State: s 13(1). The Secretary of State has power to make regulations for prescribing anything which is to be prescribed under the Employment Agencies Act 1973: s 12(1). Regulations may make different provision in relation to different cases or classes of cases: s 12(3). Before making regulations he must consult with such bodies as appear to him to be representative of the interests concerned: s 12(2). After consultation with such bodies as appear to him to be concerned the Secretary of State may by order repeal or amend provisions of local Acts which appear to him to be unnecessary or inconsistent with the Employment Agencies Act 1973: see s 14(3).

The power to make regulations and orders under the Employment Agencies Act 1973 is exercisable by statutory instrument: s 12(4). Regulations under s 13(7)(i) (see text and note 24) or an order under s 14(3), are subject to annulment in pursuance of a resolution of either House of Parliament: s 12(6) (substituted by the Employment Relations Act 1999 s 31, Sch 7 paras 1, 6). See **PARLIAMENT** vol 34 (Reissue) PARA 945.

24 See the Employment Agencies Act 1973 s 13(7)(i) (substituted by the Employment Relations Act 1999 Sch 7 para 8). The following bodies have been exempted under this head:

- 55 (1) certain colleges for teacher training, other institutions of further education, charities, bodies comprising representatives of industrial training boards (defined in the Industrial Training Act 1982 s 1(2): see **EMPLOYMENT** vol 40 (2009) PARA 587), together with representatives of any one or more of an organisation of employers, an organisation of workers or a body comprising representatives of two or more such organisations, and the British Council (see the Employment Agencies Act 1973 (Exemption) Regulations 1976, SI 1976/710);
- 56 (2) the Crown Agents for Oversea Governments and Administrations, or any of its wholly owned subsidiaries (see the Employment Agencies Act 1973 (Exemption) (No 2) Regulations 1979, SI 1979/1741 (amended by SI 1984/978));
- 57 (3) the Association of Dispensing Opticians Ltd, the Association of Meat Inspectors (Great Britain) Ltd, the Chartered Institute of Patent Agents, the Faculty of Actuaries in Scotland, the Incorporated Brewers' Guild, the Institute of Actuaries, the Institute of Careers Officers, the Institute of Chartered Accountants in England and Wales, the Institute of Chartered Accountants of Scotland, the Institute of Chartered Secretaries and Administrators, the Institute of Legal Executives, the Institute of Marketing, the Institute of the Motor Industry, the Institute of Personnel Management, the Institute of Qualified Private Secretaries Ltd, the Law Society of Scotland, local law societies in England and Wales, the Pensions Management Institute, the Pharmaceutical Society of Great Britain, the Royal Society of Chemistry, the Society of Architectural and Associated Technicians, the Society of Business Economists, the Society of Chiropodists, the Law Society and Law Society Services Ltd (see the Employment Agencies Act 1973 (Exemption) (No 2) Regulations 1984, SI 1984/978).

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LEGISLATIVE CONTROLS/(3) PARTICULAR TRADES/(ix) Employment Agencies/884. Conduct of employment agencies and employment businesses.

884. Conduct of employment agencies and employment businesses.

The Secretary of State¹ may make regulations to secure the proper conduct of employment agencies² and employment businesses³ and to protect the interests of persons availing themselves of the services of such agencies and businesses⁴. Any person who contravenes or fails to comply with such regulations is guilty of an offence⁵.

Regulations made under this power⁶ provide that employment agencies and employment businesses must abide by certain general obligations relating to their dealings with work seekers and hirers⁷, must notify work-seekers of their charges and of the terms of any offers or gifts made to induce work-seekers to engage a particular agency or employment business⁸, must obtain the agreement of work-seekers and hirers to the terms which apply or will apply as between the particular agency or employment business and the work-seeker or hirer⁹, must satisfy specified requirements in relation to the introduction or supply of work-seekers to hirers¹⁰, and must comply with certain requirements as to advertising¹¹, client accounts¹², charges to work-seekers¹³, confidentiality¹⁴ and the keeping of records¹⁵. Special provision is made for situations where more than one agency or employment business is involved¹⁶, and where work-seekers are provided with travel or required to live away from home¹⁷.

Any officer duly authorised in that behalf by the Secretary of State may, at all reasonable times, and on producing written evidence of his authority, if so required¹⁸:

- 131 (1) enter any relevant business premises¹⁹;
- 132 (2) inspect those premises and: (a) any records or documents kept in pursuance of the Employment Agencies Act 1973 or any regulations made under that Act; and (b) any financial records or other financial documents not falling within head (a) which he may reasonably require to inspect for the purpose of ascertaining whether the provisions of the Act and of any regulations made under it are being complied with or of enabling the Secretary of State to exercise his functions under the Act²⁰; and
- 133 (3) require any person on those premises to furnish him with information which he may require for ascertaining whether the provisions of the Act or of any regulations made under it are being complied with or for enabling the Secretary of State to exercise his functions²¹.

Restrictions are placed upon the disclosure of any information obtained in the exercise of these powers²².

1 As to the Secretary of State see PARA 802. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 802 note 21.

2 As to the meaning of 'employment agency' see PARA 881.

3 As to the meaning of 'employment business' see PARA 881.

4 Employment Agencies Act 1973 s 5(1). As to the purposes for which regulations may be made see s 5(1)(a)-(ec) (s 5(1)(ea)-(ec) added by the Employment Relations Act 1999 s 31, Sch 7 paras 1, 2(1), (2)). A reference in the Employment Agencies Act 1973 s 5(1)(ea)-(ec) to services includes a reference to services in respect of persons seeking employment outside the United Kingdom and persons normally resident outside the United Kingdom seeking employment in the United Kingdom: s 5(1A) (added by the Employment Relations Act 1999

Sch 7 para 2(3)). As to the meaning of 'United Kingdom' see PARA 806 note 7. As to the making of regulations and orders under the Employment Agencies Act 1973 see PARA 883 note 23. In the case of regulations under s 5(1), a draft must have been laid before and approved by each House of Parliament: s 12(5) (substituted by the Employment Relations Act 1999 Sch 7 para 6). See **PARLIAMENT** vol 34 (Reissue) PARA 944.

Any person who makes or causes to be made or knowingly allows to be made any entry in a record or other document required to be kept in pursuance of the Employment Agencies Act 1973 or of any regulations made under it which he knows to be false in a material particular is guilty of an offence: s 10(2). A person who commits such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: s 10(3) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

Notwithstanding the Magistrates' Courts Act 1980 s 127(1) (information to be laid within six months of offence: see **MAGISTRATES**) an information relating to a relevant offence which is triable by a magistrates' court in England and Wales may be so tried if it is laid at any time within three years after the date of the commission of the offence, and within six months after the date on which evidence sufficient in the opinion of the Secretary of State to justify the proceedings came to his knowledge: Employment Agencies Act 1973 s 11A(2) (s 11A added by the Employment Relations Act 1999 Sch 7 para 5). For this purpose a certificate of the Secretary of State as to the date on which evidence came to his knowledge is conclusive evidence: Employment Agencies Act 1973 s 11A(4) (as so added). A relevant offence is one under s 9(4)(b) (see note 22) or s 10(2), for which proceedings are instituted by the Secretary of State: s 11A(1) (as so added; amended by the Employment Act 2008 s 20, Schedule Pt 5).

Regulations to be made under European Parliament and EC Council Directive 2008/104 on temporary agency work (OJ L327, 5.12.2008, p 9), which is due to be implemented by 5 December 2011 (see art 11(1)) will not affect the rules as to the conduct of employment agencies.

5 Employment Agencies Act 1973 s 5(2). A person guilty of such an offence is liable, on conviction on indictment, to a fine and, on summary conviction to a fine not exceeding the statutory maximum: s 5(2) (amended by the Employment Act 2008 s 15). As to the statutory maximum see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 140. See also PARA 882 note 6. In addition, without prejudice to any right of action and any defence which exists or may be available apart from the provisions of the 1973 Act and the Conduct of Employment Agencies and Employment Businesses Regulations 2003, SI 2003/3319, contravention of, or failure to comply with, any of the provisions of the Act or of the regulations by an agency or employment business, so far as it causes damage, is actionable: reg 30(1). For this purpose, 'damage' includes the death of, or injury to, any person (including any disease and any impairment of that person's physical or mental condition: reg 30(2)). Where any term of a contract is prohibited or made unenforceable by the regulations, the contract continues to bind the parties to it if it is capable of continuing in existence without that term: reg 31(1). Where a hirer (see note 7) pays any money pursuant to a contractual term which is unenforceable by virtue of reg 10 (see note 7), the hirer is entitled to recover that money: reg 31(2).

6 See the Conduct of Employment Agencies and Employment Businesses Regulations 2003, SI 2003/3319 (amended by SI 2005/2114; SI 2007/3575). Note that these regulations do not govern the employment status of agency workers, which remains a matter of common law (see **EMPLOYMENT** vol 39 (2009) PARA 12); nor are these regulations affected by the Agency Worker Regulations 2010, SI 2010/93, which are due to come into force on 1 October 2011.

7 See the Conduct of Employment Agencies and Employment Businesses Regulations 2003, SI 2003/3319, regs 5-12. 'Agency' means an employment agency as defined in the Employment Agencies Act 1973 s 13(1), (2) (see PARA 881) and includes a person carrying on an agency, and in the case of a person who carries on both an agency and an employment business means such a person in his capacity in carrying on the agency; and 'employment business' means an employment business as defined in s 13(1), (3) (see PARA 881) and includes a person carrying on an employment business, and in the case of a person who carries on both an employment business and an agency means such a person in his capacity in carrying on the employment business: Conduct of Employment Agencies and Employment Businesses Regulations 2003, SI 2003/3319, reg 2. 'Work-seeker' means a person to whom an agency or employment business provides or holds itself out as being capable of providing work-finding services; and 'hirer' means a person (including an employment business) to whom an agency or employment business introduces or supplies or holds itself out as being capable of introducing or supplying a work-seeker: reg 2. The general obligations cover restrictions on requiring work-seekers to use additional services of the agency or employment business (see reg 5 (amended by SI 2007/3575)), on taking detrimental action relating to work-seekers working elsewhere (see the Conduct of Employment Agencies and Employment Businesses Regulations 2003, SI 2003/3319, reg 6), on providing work-seekers in industrial disputes (see reg 7), on paying work-seekers' remuneration (see reg 8), on agencies and employment businesses purporting to act on a different basis to work-seekers and hirers (see reg 9) and on charges to hirers (see reg 10), and prohibitions on entering into a contract on behalf of a client (see reg 11) and on employment businesses withholding payment to work-seekers on certain grounds (see reg 12).

The regulations apply equally, with modifications, to a work-seeker which is a company: see reg 32.

8 See the Conduct of Employment Agencies and Employment Businesses Regulations 2003, SI 2003/3319, reg 13. As to the requirements relating to notification see reg 33.

9 See the Conduct of Employment Agencies and Employment Businesses Regulations 2003, SI 2003/3319, regs 14-17.

10 See the Conduct of Employment Agencies and Employment Businesses Regulations 2003, SI 2003/3319, regs 18-22. Such requirements include obtaining specified information from a hirer (see reg 18), confirming the identity of a work-seeker and that he has the necessary qualifications, experience, etc and is willing to work in the position which the hirer seeks to fill (see reg 19), taking steps for the protection of the work-seeker and the hirer (see reg 20), providing information to work-seekers and hirers (see reg 21) and fulfilling additional requirements where professional qualifications are required or where work-seekers are to work with vulnerable persons (see reg 22).

11 See the Conduct of Employment Agencies and Employment Businesses Regulations 2003, SI 2003/3319, reg 27.

12 See the Conduct of Employment Agencies and Employment Businesses Regulations 2003, SI 2003/3319, reg 25, Sch 2.

13 See the Conduct of Employment Agencies and Employment Businesses Regulations 2003, SI 2003/3319, reg 26, Sch 3; and PARA 885.

14 See the Conduct of Employment Agencies and Employment Businesses Regulations 2003, SI 2003/3319, reg 28 (amended by SI 2007/3575).

15 See the Conduct of Employment Agencies and Employment Businesses Regulations 2003, SI 2003/3319, reg 29, Schs 4-6. As to the making of false entries in records see note 4.

16 See the Conduct of Employment Agencies and Employment Businesses Regulations 2003, SI 2003/3319, reg 23.

17 See the Conduct of Employment Agencies and Employment Businesses Regulations 2003, SI 2003/3319, reg 24.

18 Employment Agencies Act 1973 s 9(1) (amended by the Employment Protection Act 1975 s 114, Sch 13 para 6).

19 Employment Agencies Act 1973 s 9(1)(a) (amended by the Employment Relations Act 1999 s 31, Sch 7 paras 1, 4(1), (2)(a)). 'Relevant business premises' means premises: (1) which are used, have been used or are to be used for or in connection with the carrying on of an employment agency or employment business; (2) which the officer has reasonable cause to believe are used or have been used for or in connection with the carrying on of an employment agency or employment business; or (3) which the officer has reasonable cause to believe are used for the carrying on of a business by a person who also carries on or has carried on an employment agency or employment business, if the officer also has reasonable cause to believe that records or other documents which relate to the employment agency or employment business are kept there: Employment Agencies Act 1973 s 9(1B) (added by the Employment Relations Act 1999 Sch 7 para 4(3), (4)).

A person who obstructs an officer in the exercise of his powers under the Employment Agencies Act 1973 s 9(1) (a) or (b), (1AD) or (1AE), or who, without reasonable excuse, fails to comply with a requirement under s 9(1)(c), (1A), (1AA) or (1AB), is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale: see the Employment Agencies Act 1973 s 9(3) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46; and by the Employment Relations Act 1999 Sch 7 para 4(5)(a); and the Employment Act 2008 s 16(1), (8)).

20 Employment Agencies Act 1973 s 9(1)(b) (amended by the Employment Act 2008 s 16(1), (2)). See also note 15.

'Document' includes information recorded in any form; and information is kept at premises if it is accessible from them: Employment Agencies Act 1973 s 9(1C) (added by the Employment Relations Act 1999 Sch 7 para 4(3), (4)).

If an officer seeks to inspect or acquire, in accordance with the Employment Agencies Act 1973 s 9(1)(b) or (c), a record or other document or information which is not kept at the premises being inspected, the officer may by notice in writing require the person carrying on the employment agency or employment business to furnish him with the record or other document or information at such time and place as he may specify: s 9(1A) (added by the Employment Relations Act 1999 Sch 7 para 4(3), (4); and amended by the Employment Act 2008 s 16(1), (4)). Where a person carrying on an employment agency or employment business fails to comply with the Employment Agencies Act 1973 s 9(1A) in relation to any record or other document or information and the

officer has reasonable cause to believe that the record or other document or information is kept by a person concerned with the carrying on of the employment agency or employment business or a person formerly so concerned, the officer may by notice in writing require that person to furnish him with the record or other document or information at such time and place as he may specify: s 9(1AA) (s 9(1AA)-(1AC) added by the Employment Act 2008 s 16(1), (5)). Where a person carrying on an employment agency or employment business fails to comply with the Employment Agencies Act 1973 s 9(1A) in relation to any financial record or other financial document which is kept by a bank, the officer may by notice in writing require the bank to furnish the record or other document to him at such time and place as he may specify: s 9(1AB) (as so added). For this purpose, 'bank' means a person who has permission under the Financial Services and Markets Act 2000 Pt IV (ss 40-55) to accept deposits: Employment Agencies Act 1973 s 9(1AC) (as so added).

An officer may take copies of any record or other document inspected by or furnished to him under s 9 and may, for this purpose, remove a record or other document from the premises where it is inspected by or furnished to him; but he must return it as soon as reasonably practicable: s 9(1AD), (1AE) (added by the Employment Act 2008 s 16(1), (6)).

21 Employment Agencies Act 1973 s 9(1)(c). See also note 20. Nothing in s 9 requires a person to produce, provide access to or make arrangements for the production of anything which he could not be compelled to produce in civil proceedings before the High Court: s 9(2) (s 9(2) substituted and s 9(2A), (2B) added by the Employment Relations Act 1999 Sch 7 para 4(4)). A statement made by a person in compliance with a requirement under the Employment Agencies Act 1973 s 9 may be used in evidence against him in criminal proceedings: s 9(2A) (as so added). However, except in proceedings for an offence under the Perjury Act 1911 s 5 (false statements made otherwise than on oath: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 716-717), no evidence relating to the statement may be adduced, and no question relating to it may be asked, by or on behalf of the prosecution unless evidence relating to it is adduced, or a question relating to it is asked, by or on behalf of the person who made the statement: Employment Agencies Act 1973 s 9(2B) (as so added).

22 See the Employment Agencies Act 1973 s 9(4) (amended by the Employment Act 2008 ss 16(1), (9), 18(2)(a), 20, Schedule Pt 5). No information so obtained, or obtained pursuant to the National Minimum Wage Act 1998 s 15(5A) (see **EMPLOYMENT** vol 39 (2009) PARA 214), may be disclosed except:

- 58 (1) with the consent of the person furnishing the information, or, where furnished on behalf of another person, with the consent of that other person or with the consent of the person carrying on or proposing to carry on the employment agency or employment business concerned (Employment Agencies Act 1973 s 9(4)(a)(i)); or
- 59 (2) to the Secretary of State, or an officer or servant appointed by him, or a person exercising functions on his behalf, for the purposes of the exercise of their respective functions under the Act (s 9(4)(a)(ii) (renumbered by the Employment Protection Act 1975 ss 114, 125(3), Sch 13 para 6(3), Sch 18)); or
- 60 (3) by the Secretary of State or such an officer, servant or person to the person carrying on or proposing to carry on the employment agency or employment business concerned, to any person in his employment, or, in the case of information relating to a person availing himself of the services of such an agency or business, to that person (Employment Agencies Act 1973 s 9(4)(a)(iii) (added by the Employment Protection Act 1975 ss 114, 125(3), Sch 13 para 6(3), Sch 18)); or
- 61 (4) with a view to the institution of, or otherwise for the purposes of, any criminal proceedings pursuant to or arising out of the Act or for the purposes of any proceedings under the Employment Agencies Act 1973 s 3A, 3C or 3D (see PARA 882) (s 9(4)(a)(iv) (renumbered by the Employment Protection Act 1975 ss 114, 125(3), Sch 13 para 6(3), Sch 18; and amended by the Deregulation and Contracting Out Act 1994 s 35, Sch 10 para 1(4); and the Employment Act 2008 s 18(2)(b); and prospectively amended by the Employment Relations Act 1999 ss 31, 44, Sch 7 paras 1, 4(6), Sch 9 Table 8 as from a day to be appointed)); or
- 62 (5) to an officer acting for the purposes of the National Minimum Wage Act 1998 for any purpose relating to that Act (Employment Agencies Act 1973 s 9(4)(a)(v) (added by the Employment Act 2008 s 18(2)(b))).

Any person who contravenes the Employment Agencies Act 1973 s 9(4)(a) is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale: s 9(4)(b) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). See also PARA 882 note 6.

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885. Charging of fees.

Except in such cases or classes of case as the Secretary of State¹ may prescribe²: (1) a person carrying on an employment agency³ may not request or directly or indirectly receive any fee⁴ from any person for providing services (whether by the provision of information or otherwise) for the purpose of finding him employment or seeking to find him employment⁵; (2) a person carrying on an employment business⁶ may not request or directly or indirectly receive any fee from an employee for providing services (whether by the provision of information or otherwise) for the purpose of finding or seeking to find another person, with a view to the employee acting for and under the control of that other person; (3) a person carrying on an employment business may not request or directly or indirectly receive any fee from a second person for providing services (whether by the provision of information or otherwise) for the purpose of finding or seeking to find a third person, with a view to the second person becoming employed by the first person and acting for and under the control of the third person⁷. Any person contravening this prohibition⁸ is guilty of an offence⁹.

The regulations made under the provisions described above provide that fees may be charged by agents for finding work for persons in specified professions in the entertainment industry¹⁰, for photographic and fashion models and for professional sports persons¹¹, except where the agent also charges a fee to the hirer in question¹², or where the agent and the employer are connected with each other unless the agency informs the work-seeker of the fact that it is connected with the hirer¹³. Where the agent is allowed to charge a fee, any fee charged by the agency may consist only of a charge or commission payable out of the work-seeker's earnings in any such employment which the agency has found for him¹⁴. In addition, the restrictions on charging fees to work-seekers do not apply to any fee consisting of a charge to a work-seeker in respect of the purchase of or subscription for a publication containing information about employers, provided that certain conditions are met¹⁵, or in respect of a fee charged by an agency for the service provided by it of finding or seeking to find a work-seeker employment where the work-seeker in question is a company and the employment is in an occupation other than any of those occupations mentioned above¹⁶.

1 As to the Secretary of State see PARA 802. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 802 note 21.

2 As to the meaning of 'prescribed' see PARA 883 note 23.

3 As to the meaning of 'employment agency' see PARA 881.

4 'Fee' includes any charge however described: Employment Agencies Act 1973 s 13(1). As to the meaning of 'demand' in relation to a fee see *First Point International Ltd v Department of Trade and Industry* (1999) 164 JP 89, DC.

5 The collection and assessment of appraisal information is part of the process of seeking to find employment for a client, if the seeking of information is sufficiently proximate to what happens thereafter: see *First Point International Ltd v Department of Trade and Industry* (1999) 164 JP 89, DC.

6 As to the meaning of 'employment business' see PARA 881.

7 Employment Agencies Act 1973 s 6(1) (substituted by the Employment Relations Act 1999 s 31, Sch 7 paras 1, 3).

As to the making of regulations and orders under the Employment Agencies Act 1973 see PARA 883 note 23. In the case of regulations under s 6(1), a draft must have been laid before and approved by each House of Parliament: s 12(5) (substituted by the Employment relations Act 1999 Sch 7 para 6). See **PARLIAMENT** vol 34 (Reissue) PARA 944.

8 As to bodies completely exempted from the application of the Employment Agencies Act 1973 see PARA 883.

9 Employment Agencies Act 1973 s 6(2). A person guilty of such an offence is liable, on conviction on indictment, to a fine and, on summary conviction to a fine not exceeding the statutory maximum: s 6(2) (amended by the Employment Act 2008 s 15). See also PARA 882 note 6. As to the statutory maximum see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 140.

10 See the Conduct of Employment Agencies and Employment Businesses Regulations 2003, SI 2003/3319, reg 26(1). The specified professions referred to in the text are: (1) actors, singers, musicians, dancers and other performers; (2) composers, writers, artists, directors, production managers, lighting cameramen, camera operators, make up artists, clothes, hair or make up stylists, film editors, action arrangers or co-ordinators, stunt arrangers, costume or production designers, recording engineers, property masters, film continuity persons, sound mixers, photographers, stage managers, producers, choreographers, theatre designers: Sch 3 (amended by SI 2007/3575).

11 See the Conduct of Employment Agencies and Employment Businesses Regulations 2003, SI 2003/3319, reg 26(1), Sch 3.

12 See the Conduct of Employment Agencies and Employment Businesses Regulations 2003, SI 2003/3319, reg 26(3).

13 See the Conduct of Employment Agencies and Employment Businesses Regulations 2003, SI 2003/3319, reg 26(4). For these purposes a person is connected with:

- 63 (1) his spouse or civil partner or minor child or stepchild (reg 3(1)(a) (amended by SI 2005/2114));
- 64 (2) any individual who employs him or is his employee (Conduct of Employment Agencies and Employment Businesses Regulations 2003, SI 2003/3319, reg 3(1)(b));
- 65 (3) any person who is in partnership with him (reg 3(1)(c));
- 66 (4) any company of which he is a director or other officer and any company connected with that company (reg 3(1)(d));
- 67 (5) in the case of a company: (a) any person who is a director or other officer of that company; (b) any subsidiary or holding company, both as defined in the Companies Act 2006 s 1159, of that company and any person who is a director or other officer, or an employee of any such subsidiary or holding company; (c) any company of which the same person or persons have control (Conduct of Employment Agencies and Employment Businesses Regulations 2003, SI 2003/3319, reg 3(1)(e)); and
- 68 (6) in the case of a trustee of a trust, a beneficiary of the trust, and any person to whom the terms of the trust confer a power that may be exercised for that person's benefit (reg 3(1)(f)).

For these purposes a person is to be taken as having control of a company if: (i) he or any person with whom he is connected is a director of that company or of another company which has control of it; (ii) the directors of that company or another company which has control of it (or any of them) are accustomed to act in accordance with his directions or instructions; or (iii) he is entitled to exercise, or control the exercise of, one third or more of the voting power at any general meeting of the company or of another company which has control of it: reg 3(2). 'Company' includes any body corporate (whether incorporated in Great Britain or elsewhere) and references to directors and other officers of a company and to voting power at any general meeting of a company have effect in the case of a company incorporated outside Great Britain with any necessary modifications: reg 2. As to the meaning of 'Great Britain' see PARA 806 note 7.

14 Conduct of Employment Agencies and Employment Businesses Regulations 2003, SI 2003/3319, reg 26(2). This does not apply to any fee charged to a work-seeker by an agency in respect of the inclusion of information about the work-seeker in a publication provided that:

- 69 (1) the publication is wholly for one or both of the following purposes, namely the purpose of finding work-seekers employment in, or providing hirers with information about work-seekers in relation to, any of the occupations listed in Sch 3 (reg 26(5)(a)); and

- 70 (2) either: (a) the only work-finding service provided by the agency or any person connected with it to the work-seeker is the service described in this note; or (b) the fee charged to the work-seeker amounts to no more than a reasonable estimate of the cost of production and circulation of the publication attributable to the inclusion of information about that work-seeker in the publication (reg 26(5)(b)); and
- 71 (3) in addition to the requirements in regs 13, 14 and 16, in so far as they are applicable, the agency has, before it entered into the contract with the work-seeker by reference to which the fee is to be charged, made available to him a copy of a current edition of the publication (or, where the publication exists only in electronic form, given him access to a current edition of the publication) in which it is offering to include information about him (reg 26(5)(c) (amended by SI 2007/3575)); and
- 72 (4) where an agency proposes to include information about a work-seeker in a publication, for seven days from the date of the agency and the work-seeker entering into any contract, whether written or oral and whether or not expressly mentioning fees permitted under the Conduct of Employment Agencies and Employment Businesses Regulations 2003, SI 2003/3319, reg 26(5), (a) no fee permitted under reg 26(5) is payable by the work-seeker; (b) the work-seeker is entitled without detriment or penalty to cancel or withdraw from any such contract with immediate effect by informing the agency of such cancellation or withdrawal; and (c) the agency must not include the information in the publication (Conduct of Employment Agencies and Employment Businesses Regulations 2003, SI 2003/3319, reg 26(5)(d) (added by SI 2007/3575)).

As to the meanings of 'agency', 'work-seeker' and 'hirer' see PARA 884 note 7. 'Publication' means any publication whether in paper or electronic form other than a programme service within the meaning of the Broadcasting Act 1990 (see **TELECOMMUNICATIONS AND BROADCASTING**): Conduct of Employment Agencies and Employment Businesses Regulations 2003, SI 2003/3319, reg 2. 'Work-finding services' means services (whether by the provision of information or otherwise) provided: (i) by an agency to a person for the purpose of finding that person employment or seeking to find that person employment; (ii) by an employment business to an employee of the employment business for the purpose of finding or seeking to find another person, with a view to the employee acting for and under the control of that other person; (iii) by an employment business to a person (the 'first person') for the purpose of finding or seeking to find another person (the 'second person'), with a view to the first person becoming employed by the employment business and acting for and under the control of the second person: reg 2.

15 See the Conduct of Employment Agencies and Employment Businesses Regulations 2003, SI 2003/3319, reg 26(6).

16 Conduct of Employment Agencies and Employment Businesses Regulations 2003, SI 2003/3319, reg 26(7).

Halsbury's Laws of England/TRADE AND INDUSTRY (VOLUME 97 (2010) 5TH EDITION)/2. LEGISLATIVE CONTROLS/(3) PARTICULAR TRADES/(ix) Employment Agencies/886. Discrimination and harassment by employment agencies.

886. Discrimination and harassment by employment agencies.

It is unlawful for an employment agency¹ to discriminate² either against a woman³ or on racial grounds⁴, on grounds of religion or belief⁵, sexual orientation⁶ or age⁷:

- 134 (1) in the terms on which the agency offers to provide any of its services⁸; or
- 135 (2) by refusing or deliberately omitting to provide any of its services⁹; or
- 136 (3) in the way it provides any of its services¹⁰.

It is unlawful for an employment agency, in relation to the provision of its services, to subject to harassment¹¹ a person to whom it provides such services or who has requested the provision of such services¹².

However, these provisions do not apply if the discrimination or harassment only concerns employment which the employer could lawfully refuse to offer the person in question¹³. An employment agency is under no liability if it proves that it acted in reliance on a statement made by the employer to the effect that its action would not be unlawful¹⁴, and that it was reasonable for the agency to rely on that statement¹⁵.

It is unlawful for a provider of employment services¹⁶ to discriminate¹⁷ against a disabled person¹⁸ in failing to comply with a duty to make adjustments in circumstances in which the effect of that failure is to place the disabled person at a substantial disadvantage in comparison with persons who are not disabled in relation to the provision of the service¹⁹. It is also unlawful for a provider of employment services, in relation to such services, to subject to harassment²⁰ a disabled person to whom he is providing such services or who has requested him to provide such services²¹.

It is unlawful for an employment agency to refuse a person any of its services:

- 137 (a) because he is, or is not, a member of a trade union; or
- 138 (b) because he is unwilling to accept a requirement to take steps to become or cease to be, or to remain or not to become a member of a trade union²².

1 'Employment agency' means a person who, for profit or not, provides services for the purpose of finding employment for workers or supplying employers with workers: Sex Discrimination Act 1975 s 82(1); Race Relations Act 1976 s 78(1). The same definition applies for the purposes of the Employment Equality (Religion or Belief) Regulations 2003, SI 2003/1660 (see reg 18(6)(a)); the Employment Equality (Sexual Orientation) Regulations 2003, SI 2003/1661 (see reg 18(6)(a)); and the Employment Equality (Age) Regulations 2006, SI 2006/1031 (see reg 21(6)(a)), but in the regulations, 'employment agency' does not include a governing body of an educational establishment or a proprietor of a school. 'Employment' means employment under a contract of service or of apprenticeship or a contract personally to execute any work or labour (Sex Discrimination Act 1975 s 82(1); Race Relations Act 1976 s 78(1)) or employment under a contract of service or of apprenticeship or a contract personally to do any work (Employment Equality (Religion or Belief) Regulations 2003, SI 2003/1660, reg 2(3); Employment Equality (Sexual Orientation) Regulations 2003, SI 2003/1661, reg 2(3); Employment Equality (Age) Regulations 2006, SI 2006/1031, reg 2(2)), and related expressions must be construed accordingly.

2 As to the meanings of 'discrimination', 'discriminate' and related expressions see the Sex Discrimination Act 1975 s 5 (see **DISCRIMINATION** vol 13 (2007 Reissue) PARA 344); the Race Relations Act 1976 ss 1-3 (see **DISCRIMINATION** vol 13 (2007 Reissue) PARA 439 et seq); the Employment Equality (Religion or Belief) Regulations 2003, SI 2003/1660, regs 3, 4 (see **DISCRIMINATION** vol 13 (2007 Reissue) PARAS 660-661); the Employment Equality (Sexual Orientation) Regulations 2003, SI 2003/1661, regs 3, 4 (see **DISCRIMINATION** vol 13 (2007

Reissue) PARAS 722-723); and the Employment Equality (Age) Regulations 2006, SI 2006/1031, regs 3-5 (see **DISCRIMINATION** vol 13 (2007 Reissue) PARAS 754-756).

- 3 'Woman' includes a female of any age: Sex Discrimination Act 1975 s 82(1).
- 4 As to the meaning of 'racial grounds', etc see the Race Relations Act 1976 s 3; and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 441.
- 5 As to grounds of religion or belief see **DISCRIMINATION** vol 13 (2007 Reissue) PARA 660 note 3.
- 6 As to grounds of sexual orientation see **DISCRIMINATION** vol 13 (2007 Reissue) PARA 722 note 3.
- 7 As to grounds of age see **DISCRIMINATION** vol 13 (2007 Reissue) PARA 754.
- 8 Sex Discrimination Act 1975 s 15(1)(a); Race Relations Act 1976 s 14(1)(a); Employment Equality (Religion or Belief) Regulations 2003, SI 2003/1660, reg 18(1)(a); Employment Equality (Sexual Orientation) Regulations 2003, SI 2003/1661, reg 18(1)(a); Employment Equality (Age) Regulations 2006, SI 2006/1031, reg 21(1)(a). References to the services of an employment agency include guidance on careers and any other services related to employment: Sex Discrimination Act 1975 s 15(3); Race Relations Act 1976 s 14(3) (amended by SI 2003/1626); Employment Equality (Religion or Belief) Regulations 2003, SI 2003/1660, reg 18(6)(b); Employment Equality (Sexual Orientation) Regulations 2003, SI 2003/1661, reg 18(6)(b); Employment Equality (Age) Regulations 2006, SI 2006/1031, reg 21(6)(b).
- 9 Sex Discrimination Act 1975 s 15(1)(b); Race Relations Act 1976 s 14(1)(b); Employment Equality (Religion or Belief) Regulations 2003, SI 2003/1660, reg 18(1)(b); Employment Equality (Sexual Orientation) Regulations 2003, SI 2003/1661, reg 18(1)(b); Employment Equality (Age) Regulations 2006, SI 2006/1031, reg 21(1)(b).
- 10 Sex Discrimination Act 1975 s 15(1)(c); Race Relations Act 1976 s 14(1)(c); Employment Equality (Religion or Belief) Regulations 2003, SI 2003/1660, reg 18(1)(c); Employment Equality (Sexual Orientation) Regulations 2003, SI 2003/1661, reg 18(1)(c); Employment Equality (Age) Regulations 2006, SI 2006/1031, reg 21(1)(c).
- 11 As to the meaning of 'harassment' see **DISCRIMINATION** vol 13 (2007 Reissue) PARAS 347, 444, 662, 724, 757.
- 12 Sex Discrimination Act 1975 s 15(1A) (added by SI 2005/2467); Race Relations Act 1976 s 14(1A) (added by SI 2003/1626); Employment Equality (Religion or Belief) Regulations 2003, SI 2003/1660, reg 18(2); Employment Equality (Sexual Orientation) Regulations 2003, SI 2003/1661, reg 18(2); Employment Equality (Age) Regulations 2006, SI 2006/1031, reg 21(2).
- 13 Sex Discrimination Act 1975 s 15(4); Race Relations Act 1976 s 14(4); Employment Equality (Religion or Belief) Regulations 2003, SI 2003/1660, reg 18(3); Employment Equality (Sexual Orientation) Regulations 2003, SI 2003/1661, reg 18(3); Employment Equality (Age) Regulations 2006, SI 2006/1031, reg 21(3).
- 14 It would not, by virtue of the operation of the provision set out in the text and note 9, be unlawful.
- 15 Sex Discrimination Act 1975 s 15(5); Race Relations Act 1976 s 14(5) (amended by the Trade Union Reform and Employment Rights Act 1993 s 49(2), Sch 8 paras 8(b), 9(b) respectively); Employment Equality (Religion or Belief) Regulations 2003, SI 2003/1660, reg 18(4); Employment Equality (Sexual Orientation) Regulations 2003, SI 2003/1661, reg 18(4); Employment Equality (Age) Regulations 2006, SI 2006/1031, reg 21(4). A person who knowingly or recklessly makes such a statement which in a material respect is false or misleading commits an offence punishable on summary conviction with a fine not exceeding level 5 on the standard scale: Sex Discrimination Act 1975 s 15(6); Race Relations Act 1976 s 14(6) (both amended by virtue of the Criminal Justice Act 1982 ss 38, 46); Employment Equality (Religion or Belief) Regulations 2003, SI 2003/1660, reg 18(5); Employment Equality (Sexual Orientation) Regulations 2003, SI 2003/1661, reg 18(5); Employment Equality (Age) Regulations 2006, SI 2006/1031, reg 21(5). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.
- 16 'Employment services' means vocational guidance, vocational training, or services to assist a person to obtain or retain employment, or to establish himself as self-employed: Disability Discrimination Act 1995 s 21A(1) (s 21A added by SI 2003/1673; Disability Discrimination Act 1995 s 21A(1) amended by the Disability Discrimination Act 2005 s 19(1), Sch 1 paras 15(1), (2)).
- 17 As to the meanings of 'discriminate', 'discrimination' etc in relation to a disabled person see **DISCRIMINATION** vol 13 (2007 Reissue) PARA 582.
- 18 As to the meaning of 'disabled person' see **DISCRIMINATION** vol 13 (2007 Reissue) PARA 511.

19 Disability Discrimination Act 1995 s 19(1)(aa) (added for this purpose by s 21A(3), (4)(a) (as added: see note 16)). See further **DISCRIMINATION** vol 13 (2007 Reissue) PARA 585.

20 As to the meaning of 'harassment' see **DISCRIMINATION** vol 13 (2007 Reissue) PARA 533.

21 Disability Discrimination Act 1995 s 21A(2) (as added: see note 16).

22 See **EMPLOYMENT** vol 40 (2009) para 992.

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(x) Security Industry

887. The Security Industry Authority.

There is a body corporate called the Security Industry Authority (the 'Authority')¹. The functions of the Authority are:

- 139 (1) to carry out functions relating to licensing and approvals²;
- 140 (2) to keep under review generally the provision of security industry services³ and other services involving the activities of security operatives⁴;
- 141 (3) for the purpose of protecting the public, to monitor the activities and effectiveness of persons carrying on businesses providing any security industry services or other services involving the activities of security operatives⁵;
- 142 (4) to ensure the carrying out of such inspections as it considers necessary of the activities and businesses of: (a) persons engaged in licensable conduct⁶; and (b) persons registered⁷ as approved providers of security industry services⁸;
- 143 (5) to set or approve standards of conduct, training and levels of supervision for adoption by: (a) those who carry on businesses providing security industry services or other services involving the activities of security operatives⁹; and (b) those who are employed for the purposes of such businesses¹⁰;
- 144 (6) to make recommendations and proposals for the maintenance and improvement of standards in the provision of security industry services and other services involving the activities of security operatives¹¹;
- 145 (7) to keep under review the operation of the Private Security Industry Act 2001¹².

The Authority has the power to do anything that it considers is calculated to facilitate, or is incidental or conducive to, the carrying out of any of its functions¹³. In carrying out its functions the Authority must comply with any general or specific directions given to it in writing by the Secretary of State¹⁴, and provide him with such information¹⁵ about its activities as he may request¹⁶.

The Authority is not to be regarded as the servant or agent of the Crown, or as enjoying any status, immunity or privilege of the Crown, and its property is not to be regarded as property of, or property held on behalf of, the Crown¹⁷. The Authority's members are disqualified from membership of the House of Commons¹⁸. The Authority is subject to investigation by the Parliamentary Commissioner for Administration¹⁹, and its records are public records²⁰. The Authority is to be treated as a cross-border public authority²¹ within the meaning of the Scotland Act 1998²².

1 Private Security Industry Act 2001 s 1(1).

2 Private Security Industry Act 2001 s 1(2)(a). As to licensing and approvals see PARAS 898-905.

3 'Security industry services' means services which are provided under a contract for services and in the course of which the person providing the services secures: (1) that the activities of a security operative are carried out; or (2) that a person is made available to carry out, under directions given by or on behalf of another person, any activities which will or are likely to consist of or include the activities of a security operative: Private Security Industry Act 2001 s 25(1). As to the activities of a security operative see PARA 894.

- 4 Private Security Industry Act 2001 s 1(2)(b).
- 5 Private Security Industry Act 2001 s 1(2)(c).
- 6 Private Security Industry Act 2001 s 1(2)(d)(i). As to the meaning of 'licensable conduct' see PARA 893.
- 7 le registered under the Private Security Industry Act 2001 s 14: see PARA 903.
- 8 Private Security Industry Act 2001 s 1(2)(d)(ii).
- 9 Private Security Industry Act 2001 s 1(2)(e)(i).
- 10 Private Security Industry Act 2001 s 1(2)(e)(ii).
- 11 Private Security Industry Act 2001 s 1(2)(f).
- 12 Private Security Industry Act 2001 s 1(2)(g).
- 13 Private Security Industry Act 2001 s 1(3). In particular, the Authority may, for any purpose connected with the carrying out of its functions: (1) make proposals to the Secretary of State for the modification of any provision contained in or made under the Private Security Industry Act 2001; and (2) undertake, or arrange for or support, whether financially or otherwise, the carrying out of research relating to the provision of security industry services and of other services involving the activities of security operatives: s 1(4). 'Modification' includes amendments, additions and omissions: s 25(1). As to the Secretary of State see PARA 802. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 802 note 21.
- 14 Private Security Industry Act 2001 s 2(1). Before giving directions under s 2(1), the Secretary of State must consult the Authority: s 2(2)(a) (numbered as such by the Serious Organised Crime and Police Act 2005 s 171(1), Sch 15 paras 1, 2(a)).
- 15 'Information' includes reports, references and other documents, photographs and data of any description: Private Security Industry Act 2001 s 25(1).
- 16 Private Security Industry Act 2001 s 2(3)(a) (numbered as such by the Serious Organised Crime and Police Act 2005 Sch 15 para 2(b)). The Authority has the power to bring prosecutions for offences under the Private Security Industry Act 2001: *R (on the application of Securiplan) v Security Industry Authority* [2008] EWHC 1762 (Admin), [2009] 2 All ER 211.
- 17 Private Security Industry Act 2001 s 1(5).
- 18 House of Commons Disqualification Act 1975 s 1(1), Sch 1 Pt II (amended by the Private Security Industry Act 2001 s 1(6), Sch 1 para 21) (see PARLIAMENT vol 78 (2010) PARA 908).
- 19 See the Parliamentary Commissioner Act 1967 s 4(1), Sch 2 (s 4(1) substituted by the Parliamentary and Health Service Commissioners Act 1987 s 1(1); Parliamentary Commissioner Act 1967 Sch 4 substituted by SI 2008/3115); and ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 41 et seq.
- 20 le for the purposes of the Public Records Act 1958: see s 10, Sch 1 para 3 Table Pt II (amended by the Private Security Industry Act 2001 Sch 1 para 18).
- 21 le for the purposes of: (1) the Parliamentary Commissioner Act 1967 s 5(5B) (restriction on investigatory powers of Parliamentary Commissioner for Administration); (2) the Scotland Act 1998 s 23(2)(b) (power of Scottish Parliament to require persons outside Scotland to give evidence or produce documents); (3) s 70(6) of that Act (accounts prepared by cross-border authorities); (4) s 91(3)(d) of that Act (provision for investigation of certain complaints); and (5) the Scottish Public Services Ombudsman Act 2002 s 7(5) (restriction on investigatory powers of ombudsman).
- 22 Private Security Industry Act 2001 s 2A (added by the Serious Organised Crime and Police Act 2005 Sch 15 para 3).

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LEGISLATIVE CONTROLS/(3) PARTICULAR TRADES/(x) Security Industry/888. Constitution and members.

888. Constitution and members.

The Security Industry Authority¹ consists of such number of members as the Secretary of State may determine², and those members are appointed by the Secretary of State³. A member holds and vacates office in accordance with the terms of his appointment⁴. A person must not be appointed as a member for more than five years⁵. A person may at any time resign his office as a member by notice in writing to the Secretary of State⁶. The Secretary of State may remove a person from office as a member or as chairman of the Authority if satisfied that: (1) he has without reasonable excuse failed, for a continuous period of three months, to carry out his functions as a member or as chairman⁷; (2) he has without reasonable excuse been absent from three consecutive meetings of the Authority⁸; (3) he has been convicted, whether before or after his appointment, of a criminal offence⁹; (4) he is an undischarged bankrupt or his estate has been sequestrated and he has not been discharged, or he has made an arrangement with, or granted a trust deed for, his creditors¹⁰; (5) he has failed to comply with the terms of his appointment¹¹; or (6) he is otherwise unable or unfit to carry out his functions as a member or as chairman¹². A person who ceases, otherwise than by virtue of any reason described in heads (1) to (6) above, to be a member or the chairman of the Authority is eligible for re-appointment¹³.

The Authority must pay to its members such remuneration and allowances as the Secretary of State may determine¹⁴, and must, as regards any of its members or former members in whose case the Secretary of State may so determine, pay or make payments in respect of such pension or gratuity as the Secretary of State may determine¹⁵. If a person ceases to be a member or ceases to be the chairman of the Authority, and it appears to the Secretary of State that there are special circumstances which make it right that he should receive compensation, the Secretary of State may direct the Authority to make a payment of such amount as he may determine¹⁶.

1 As to the Security Industry Authority see PARA 887.

2 Private Security Industry Act 2001 s 1(6), Sch 1 para 1(1). The Secretary of State must appoint one of the members of the Authority to be to be its chairman (Sch 1 para 1(3)), and before appointing the chairman, the Secretary of State must consult the Scottish Ministers (Sch 1 para 1(4) (added by the Serious Organised Crime and Police Act 2005 s 171(1), Sch 15 paras 1, 13(a))). As to the Secretary of State see PARA 802. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 802 note 21.

3 Private Security Industry Act 2001 Sch 1 para 1(2).

4 Private Security Industry Act 2001 Sch 1 para 2(1). The chairman also holds and vacates that office in accordance with the terms of his appointment: Sch 1 para 2(4)(a).

5 Private Security Industry Act 2001 Sch 1 para 2(2).

6 Private Security Industry Act 2001 Sch 1 para 2(3). The chairman also may resign that office by notice in writing to the Secretary of State: Sch 1 para 2(4)(b). The chairman ceases to hold that office if he ceases to be a member: Sch 1 para 2(4)(c).

7 Private Security Industry Act 2001 Sch 1 para 3(1)(a) (Sch 1 para 3(1) numbered as such by the Serious Organised Crime and Police Act 2005 Sch 15 para 13(b)).

8 Private Security Industry Act 2001 Sch 1 para 3(1)(b) (as renumbered: see note 7).

- 9 Private Security Industry Act 2001 Sch 1 para 3(1)(c) (as renumbered: see note 7).
- 10 Private Security Industry Act 2001 Sch 1 para 3(1)(d) (as renumbered: see note 7).
- 11 Private Security Industry Act 2001 Sch 1 para 3(1)(e) (as renumbered: see note 7).
- 12 Private Security Industry Act 2001 Sch 1 para 3(1)(f) (as renumbered: see note 7). Before removing a person from office as chairman of the Authority, the Secretary of State must consult the Scottish Ministers: Sch 1 para 3(2) (added by the Serious Organised Crime and Police Act 2005 Sch 15 para 13(b)).
- 13 Private Security Industry Act 2001 Sch 1 para 4.
- 14 Private Security Industry Act 2001 Sch 1 para 5(1).
- 15 Private Security Industry Act 2001 Sch 1 para 5(2).
- 16 Private Security Industry Act 2001 Sch 1 para 5(3).

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LEGISLATIVE CONTROLS/(3) PARTICULAR TRADES/(x) Security Industry/889. Staff.

889. Staff.

The Security Industry Authority¹ has a chief executive² and such other employees as it may appoint³. It must pay to its employees⁴ such remuneration and allowances as it may, with the consent of the Secretary of State, determine⁵. Further, the Authority must pay, or make payments in respect of, such pensions or gratuities to or in respect of its employees or former employees as it may, with the consent of the Secretary of State, determine⁶. It must provide and maintain such schemes, whether contributory or not, as it may determine, with the consent of the Secretary of State, for the payment of pensions or gratuities in respect of its employees or former employees⁷. If any person: (1) on ceasing to be employed by the Authority becomes or continues to be one of its members⁸; and (2) was, by reference to his employment, a participant in a pension scheme maintained by the Authority⁹, the Authority may, with the consent of the Secretary of State, make provision for that person to continue to participate in that scheme, on such terms and conditions as it may with the consent of the Secretary of State determine, as if his service as a member were service as an employee¹⁰.

1 As to the Security Industry Authority see PARA 887.

2 Private Security Industry Act 2001 s 1(6), Sch 1 para 6(1)(a). The chief executive has responsibility to the Authority for the carrying out of its functions and the management of its employees: Sch 1 para 6(1)(a). The first appointment of a chief executive is to be made by the Secretary of State but, subject to obtaining the Secretary of State's consent, subsequent appointments are to be made by the Authority: Sch 1 para 6(2). Before giving consent Sch 1 para 6(2), the Secretary of State must consult the Scottish Ministers: Sch 1 para 6(2A) (added by the Serious Organised Crime and Police Act 2005 s 171(1), Sch 15 paras 1, 13(c)). As to the Secretary of State see PARA 802. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 802 note 21.

3 Private Security Industry Act 2001 Sch 1 para 6(1)(b). The numbers of such employees and their terms and conditions of service is subject to the approval of the Secretary of State: Sch 1 para 6(1)(b).

4 References to the employees of the Authority include references to its chief executive (whether appointed by the Secretary of State or by the Authority): Private Security Industry Act 2001 Sch 1 para 6(3).

5 Private Security Industry Act 2001 Sch 1 para 7(1). As to payments the Authority is required to pay to its employees see PARA 888 text and notes 14-16.

6 Private Security Industry Act 2001 Sch 1 para 7(2)(a). Employment with the Authority is included among the kinds of employment to which a civil service pension scheme applies: see the Superannuation Act 1972 Sch 1; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 567.

7 Private Security Industry Act 2001 Sch 1 para 7(2)(b). References to pensions and gratuities include references to pensions or gratuities by way of compensation to or in respect of employees who suffer loss of employment or loss or diminution of emoluments: Sch 1 para 7(3).

8 Private Security Industry Act 2001 Sch 1 para 7(4)(a).

9 Private Security Industry Act 2001 Sch 1 para 7(4)(b).

10 Private Security Industry Act 2001 Sch 1 para 7(4). Any such provision is without prejudice to Sch 1 para 5 (see PARA 888 text and notes 14-16): Sch 1 para 7(5).

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LEGISLATIVE CONTROLS/(3) PARTICULAR TRADES/(x) Security Industry/890. Committees.

890. Committees.

The Security Industry Authority¹ may establish committees². A person who is not a member of the Authority may be appointed to a committee or sub-committee of the Authority³. The Authority may pay to members of its committees or sub-committees who are neither members nor employees of the Authority such remuneration and allowances as the Secretary of State may determine⁴. The Authority may, to such extent as it may determine, delegate⁵ any of its functions to any of its committees or any of its employees⁶, and any such committee may, to such extent as it may determine, delegate any function conferred on it to any of its sub-committees or to any employee of the Authority⁷.

1 As to the Security Industry Authority see PARA 887.

2 Private Security Industry Act 2001 s 1(6), Sch 1 para 8(1). Any such committee may establish one or more sub-committees: Sch 1 para 8(2).

3 Private Security Industry Act 2001 Sch 1 para 8(3).

4 Private Security Industry Act 2001 Sch 1 para 8(4). As to the Secretary of State see PARA 802. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 802 note 21.

5 'Delegate' includes further delegate: Private Security Industry Act 2001 Sch 1 para 24.

6 Private Security Industry Act 2001 Sch 1 para 9(1). 'Employee' includes the chief executive: Sch 1 para 6(3).

7 Private Security Industry Act 2001 Sch 1 para 9(2). Any sub-committee may, to such extent as it may determine, delegate any functions conferred on it to any employee of the Authority: Sch 1 para 9(3).

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LEGISLATIVE CONTROLS/(3) PARTICULAR TRADES/(x) Security Industry/891. Proceedings and evidence.

891. Proceedings and evidence.

The Security Industry Authority¹ may regulate its own procedure, including quorum, and the procedure, including quorum, of its committees and sub-committees². The quorum for meetings of the Authority must in the first instance be determined by a meeting of the Authority that is attended by at least five of its members³. The Authority must make provision for a quorum for meetings of its committees or sub-committees to include at least one member or employee of the Authority⁴. The validity of any proceedings of the Authority, or of any of its committees or sub-committees, is not affected by: (1) any vacancy among the members of the Authority or of members of the committee or sub-committee⁵; (2) any vacancy in the office of the chairman of the Authority⁶; or (3) any defect in the appointment of any one or more members or of the chairman of the Authority⁷.

The application of the seal of the Authority is to be authenticated by the signature of any member, or of any other person who has been authorised by the Authority, whether generally or specially, for that purpose⁸. A document purporting to be duly executed by the Authority under its seal, or signed on its behalf, must be received in evidence and, unless the contrary is proved, be taken to be so executed or signed⁹.

- 1 As to the Security Industry Authority see PARA 887.
- 2 Private Security Industry Act 2001 s 1(6), Sch 1 para 10(1).
- 3 Private Security Industry Act 2001 Sch 1 para 10(2).
- 4 Private Security Industry Act 2001 Sch 1 para 10(3).
- 5 Private Security Industry Act 2001 Sch 1 para 11(a).
- 6 Private Security Industry Act 2001 Sch 1 para 11(b).
- 7 Private Security Industry Act 2001 Sch 1 para 11(c).
- 8 Private Security Industry Act 2001 Sch 1 para 12.
- 9 Private Security Industry Act 2001 Sch 1 para 13.

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LEGISLATIVE CONTROLS/(3) PARTICULAR TRADES/(x) Security Industry/892. Accounts and annual report.

892. Accounts and annual report.

The Secretary of State¹ may make payments to the Security Industry Authority² out of money provided by Parliament³, and the Authority must not borrow money except with the consent of the Secretary of State⁴.

The Authority may impose such charges as it considers appropriate in connection with the carrying out of any of its functions⁵. The Authority must pay to the Secretary of State all sums received by it⁶ in the course of, or in connection with, the carrying out of its functions⁷, and any sums so received by the Secretary of State must be paid into the Consolidated Fund⁸.

The Authority must keep proper accounts and proper records in relation to the accounts⁹, and prepare a statement of accounts in respect of each financial year¹⁰. The statement of accounts must be in such form, and must contain such information¹¹, as the Secretary of State may direct¹². The Authority must, within such period after the end of each financial year as the Secretary of State may direct, send copies of the statement of accounts relating to that year to the Secretary of State, the Scottish Ministers and the Comptroller and Auditor General¹³. The Comptroller and Auditor General must examine, certify and report on every statement of accounts sent to him by the Authority¹⁴, and lay copies of each such statement and of his report on it before each House of Parliament¹⁵.

As soon as practicable after the end of each financial year, the Authority must send to the Secretary of State and to the Scottish Ministers a report on the carrying out of its functions during that year¹⁶, and the Secretary of State must lay a copy of each such report before each House of Parliament¹⁷.

1 As to the Secretary of State see PARA 802. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 802 note 21.

2 As to the Security Industry Authority see PARA 887.

3 Private Security Industry Act 2001 s 1(6), Sch 1 para 14(1).

4 Private Security Industry Act 2001 Sch 1 para 14(2).

5 Private Security Industry Act 2001 Sch 1 para 15(1).

6 Ie otherwise than under the Private Security Industry Act 2001 Sch 1 para 14.

7 Private Security Industry Act 2001 Sch 1 para 15(2). This requirement does not apply where the Secretary of State so directs: Sch 1 para 15(3).

8 Private Security Industry Act 2001 Sch 1 para 15(4). As to the Consolidated Fund see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 711 et seq; **PARLIAMENT** vol 78 (2010) PARA 1028 et seq.

9 Private Security Industry Act 2001 Sch 1 para 16(1)(a).

10 Private Security Industry Act 2001 Sch 1 para 16(1)(b). 'Financial year' means the period beginning with the day appointed for the coming into force of s 1 and ending with the next 31 March, and any subsequent period of 12 months ending with 31 March: Sch 1 para 24.

11 As to the meaning of 'information' see PARA 887 note 15.

12 Private Security Industry Act 2001 Sch 1 para 16(2).

- 13 Private Security Industry Act 2001 Sch 1 para 16(3) (amended by the Serious Organised Crime and Police Act 2005 s 171(1), Sch 15 paras 1, 13(e)).
- 14 Private Security Industry Act 2001 Sch 1 para 16(4)(a).
- 15 Private Security Industry Act 2001 Sch 1 para 16(4)(b).
- 16 Private Security Industry Act 2001 Sch 1 para 17(1) (amended by the Serious Organised Crime and Police Act 2005 Sch 15 para 13(f)).
- 17 Private Security Industry Act 2001 Sch 1 para 17(2).

Halsbury's Laws of England/TRADE AND INDUSTRY (VOLUME 97 (2010) 5TH EDITION)/2. LEGISLATIVE CONTROLS/(3) PARTICULAR TRADES/(x) Security Industry/893. Conduct prohibited without a licence.

893. Conduct prohibited without a licence.

It is an offence¹ for a person to engage in any licensable conduct except under and in accordance with a licence².

A person engages in licensable conduct if:

146 (1) he carries out any designated activities³ for the purposes of, or in connection with, any contract for the supply of services under which:

1

- 1. (a) he;
- 2. (b) a body corporate of which he is a director⁴; or
- 3. (c) a firm⁵ of which he is a partner;

2

147 is or may be required to secure that any such activities are carried out⁶;

148 (2) in the course of any employment of his by any person he carries out any designated activities for the purposes of, or in connection with, any contract for the supply of services under which his employer is or may be so required⁷;

149 (3) he carries out any designated activities in accordance with directions given to him by or on behalf of a person to whom his services are supplied, whether or not for the carrying out of any such activities, by:

3

- 4. (a) a body corporate of which he is a director;
- 5. (b) a firm of which he is a partner;
- 6. (c) a person by whom he is employed; or
- 7. (d) a person to whom he supplies his services under a contract for the purposes of which, or in connection with which, he is or may be required to work in accordance with the directions of another⁸;

4

150 (4) he acts:

5

- 8. (a) in the course of any employment of his by any person; or
- 9. (b) in accordance with any directions⁹, as the manager or supervisor¹⁰ of one or more individuals required in the course of their employment to engage in licensable conduct falling within head (2) above¹¹;

6

151 (5) he acts:

7

- 10. (a) in the course of any employment of his by any person; or
- 11. (b) in accordance with any directions¹², as the manager or supervisor of individuals who are required in accordance with any such directions to engage in conduct which would be licensable conduct falling within head (2) above if they were required to engage in that conduct as the employees of the person to whom their services are supplied¹³;

8

152 (6) he is the director of any body corporate or the partner of any firm at a time when another of the directors or partners of the body or firm, or any employee of the body or firm, engages in licensable conduct¹⁴;

- 153 (7) he is the employer of an individual who in the course of any employment of his with that employer carries out any designated activities subject to additional controls¹⁵;
- 154 (8) in the course of any employment of his, or for purposes connected with his being a director or partner of a body corporate or firm, he carries out designated activities subject to additional controls¹⁶;
- 155 (9) in the course of any employment of his by any person he acts as the manager or supervisor of one or more individuals the duties of whose employment involve the carrying out of any designated activities subject to additional controls¹⁷; or
- 156 (10) in circumstances in which it is proposed to impose a charge for the release of immobilised vehicles¹⁸, he carries out on his own behalf or on behalf of another person any designated activities consisting in the immobilisation of vehicles¹⁹.

1 Where an offence under any provision of the Private Security Industry Act 2001 is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of a director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he (as well as the body corporate) is guilty of that offence and liable to be proceeded against and punished accordingly: s 23(1) (numbered as such by the Serious Organised Crime and Police Act 2005 s 171(1), Sch 15 paras 1, 10). As to the meaning of 'director' see note 4.

2 Private Security Industry Act 2001 s 3(1). 'Licence' means a licence from the Security Industry Authority under the Private Security Industry Act 2001: s 25(1). A person guilty of an offence under s 3 is liable, on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale, or to both: s 3(6). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

3 'Designated activities' means such of the activities of a security operative as are for the time being designated by an order made by the Secretary of State, and such an order may designate different activities for the purposes of different paragraphs of the Private Security Industry Act 2001 s 3(2): ss 3(3), 25(1). As to the activities of a security operative see PARA 894. The activities of a security operative under Sch 2 para 2 (see PARA 894), and under Sch 2 paras 3, 3A and 6 (see PARA 894) have been so designated for the purposes of s 3: Private Security Industry Act 2001 (Designated Activities) Order 2006, SI 2006/426 (amended by SI 2006/824; and SI 2006/1804). Powers to make orders and regulations are exercisable by statutory instrument: Private Security Industry Act 2001 s 24(2) (amended by the Serious Organised Crime and Police Act 2005 Sch 15 para 11(b)). A statutory instrument containing any order or regulations, other than a commencement order under the Private Security Industry Act 2001 s 26(2), or an order a draft of which has been approved for the purposes of Sch 2 para 1(3) (see PARA 894 note 1) or 7(3) (see PARA 895 note 6), is subject to annulment in pursuance of a resolution of either House of Parliament: s 24(3) (amended by the Serious Organised Crime and Police Act 2005 Sch 15 para 11(c)). See **PARLIAMENT** vol 34 (Reissue) PARA 945. Before making any regulations or order (other than an order under the Private Security Industry Act 2001 Sch 2 para 1(2) or 7(2)), or laying any draft order under Sch 2 para 1(2) or 7(2) before Parliament, the Secretary of State must consult the Scottish Ministers (except where the order is made by virtue of s 3(2)(j) (see head (10) in the text)) and the Security Industry Authority: s 24(4) (amended by the Serious Organised Crime and Police Act 2005 Sch 15 para 11(e)). Any order or regulations may make different provisions for different cases, and contain such incidental, supplemental, consequential and transitional provision as the Secretary of State thinks fit: Private Security Industry Act 2001 s 24(5) (amended by the Serious Organised Crime and Police Act 2005 Sch 15 para 11(f)). As to the Secretary of State see PARA 802. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 802 note 21.

4 'Director' in relation to a company, as defined in the Companies Act 2006 s 1(1) (see **COMPANIES** vol 14 (2009) PARA 24), includes a shadow director, in relation to any such company that is a subsidiary of another, includes any director or shadow director of the other company, and in relation to a body corporate whose affairs are managed by its members, means a member of that body corporate: Private Security Industry Act 2001 s 25(1) (amended by SI 2009/1941). 'Shadow director' means a shadow director as defined in the Companies Act 2006 s 251 (see **COMPANIES** vol 14 (2009) PARA 479): Private Security Industry Act 2001 s 25(1) (amended by SI 2007/2194). 'Subsidiary' means a subsidiary as defined in the Companies Act 2006 s 1159 (see **COMPANIES** vol 14 (2009) PARA 25): Private Security Industry Act 2001 s 25(1) (amended by SI 2009/1941).

5 References, in relation to a firm, to a member of the firm include references to any person who, in relation to that firm, is liable as a partner under the Partnership Act 1890 s 14 (see **PARTNERSHIP** vol 79 (2008) PARA 24): Private Security Industry Act 2001 s 25(2).

6 Private Security Industry Act 2001 s 3(2)(a).

- 7 Private Security Industry Act 2001 s 3(2)(b).
- 8 Private Security Industry Act 2001 s 3(2)(c).
- 9 ie directions given as mentioned in head (3) in the text: Private Security Industry Act 2001 s 3(2)(d).
- 10 A person is not to be treated as acting as the manager or supervisor of an individual by reason only of his giving directions to that individual in a case in which: (1) the directions are given on behalf of a person to whom the individual's services are provided under a contract for services, and (2) the person who under the contract provides the individual's services or another person acting on his behalf, acts as the manager or supervisor of that individual in relation to the activities carried out by him in accordance with those directions: Private Security Industry Act 2001 s 3(4).
- 11 Private Security Industry Act 2001 s 3(2)(d).
- 12 ie directions given as mentioned in head (3) in the text: Private Security Industry Act 2001 s 3(2)(e).
- 13 Private Security Industry Act 2001 s 3(2)(e).
- 14 Private Security Industry Act 2001 s 3(2)(f). The licensable conduct referred to is licensable conduct falling within any of heads (1)-(5) in the text: s 3(2)(f).
- 15 Private Security Industry Act 2001 s 3(2)(g). As to activities subject to additional controls see PARA 895.
- 16 Private Security Industry Act 2001 s 3(2)(h).
- 17 Private Security Industry Act 2001 s 3(2)(i).
- 18 'Vehicle' includes any vessel, aircraft or hovercraft: Private Security Industry Act 2001 s 25(1).
- 19 Private Security Industry Act 2001 s 3(2)(j). As to the immobilisation of vehicles see PARA 894 text and notes 10-12.

Halsbury's Laws of England/TRADE AND INDUSTRY (VOLUME 97 (2010) 5TH EDITION)/2. LEGISLATIVE CONTROLS/(3) PARTICULAR TRADES/(x) Security Industry/894. Activities of security operatives.

894. Activities of security operatives.

The activities of a security operative are manned guarding, immobilisation of vehicles, restriction and removal of vehicles, private investigations, security consultations and keyholding¹.

Manned guarding activities are: (1) guarding premises² against unauthorised access³ or occupation, against outbreaks of disorder or against damage⁴; (2) guarding property against destruction or damage, against being stolen or against being otherwise dishonestly taken or obtained⁵; (3) guarding one or more individuals against assault or against injuries that might be suffered in consequence of the unlawful conduct of others⁶. However, manned guarding activities do not include activities of an individual who exercises control over the persons allowed access to any premises to the extent only of securing, or checking, that persons allowed access have paid for admission or have invitations or passes allowing admission⁷. Further, manned guarding activities do not include activities of a person who, incidentally to the carrying out of any activities in relation to a group of individuals which are neither the activities of a security operative, nor activities comprising the exercise of control over the persons allowed access to premises⁸, maintains order or discipline amongst those individuals⁹.

Immobilisation of vehicles activities refers to the immobilisation of motor vehicles¹⁰ by the attachment to the vehicle, or to a part of it, of an immobilising device, the removal of an immobilising device from a motor vehicle, and the demanding or collection of a charge as a condition of the removal of an immobilising device from a motor vehicle, and for the purpose of preventing or inhibiting the removal of the vehicle by a person otherwise entitled to remove it and activities carried out in connection therewith¹¹. Immobilisation of vehicles activities are only activities of a security operative in circumstances in which it is proposed to impose a charge for the release of the vehicle and they are carried out in relation to a vehicle while it is elsewhere than on a road¹². The demanding or collection of a charge as a condition of the removal of an immobilising device from a motor vehicle are only activities of a security operative where they are carried out in relation to a vehicle which was immobilised while it was elsewhere than on a road¹³.

Restriction and removal of vehicles activities refers to the moving of a vehicle and the restriction of the movement of a vehicle by any means for the purpose of preventing or inhibiting the removal of a vehicle by a person otherwise entitled to remove it, in circumstances in which it is proposed to impose a charge for the release of the vehicle¹⁴. Activities carried out in relation to a vehicle while it is on a road are not activities of a security operative¹⁵. Activities restricting the movement of a vehicle by a fixed barrier which was present when that vehicle was parked and which is reasonably understood to be for the purpose of ensuring payment which has been accepted as a condition of parking are not activities of a security operative¹⁶.

Private investigations activities are any surveillance¹⁷, inquiries or investigations carried out for the purpose of obtaining information about a particular person or about the activities or whereabouts of a particular person¹⁸, or obtaining information about the circumstances in which or means by which property has been lost or damaged¹⁹. However, the following activities are not private investigations activities: (a) activities carried out exclusively for the purposes of market research²⁰; (b) activities carried out exclusively for the purpose of determining whether a particular person is credit-worthy²¹; (c) any activities of a person with a general qualification²² which are carried out by him for the purposes of any legal practice carried on by him, by any

firm²³ of which he is a partner or by which he is employed, by any body corporate of which he is a director²⁴ or member or by which he is employed²⁵; (d) any activities of a member of a relevant accountancy body²⁶ which are carried out by him as such and for the purposes of any accountancy practice carried on by him, by any firm of which he is a partner or by which he is employed, by any body corporate of which he is a director or member or by which he is employed²⁷; (e) activities carried out for the purpose of obtaining information exclusively with a view to its use, or the use of information to which it relates, for the purposes of or in connection with the publication to the public or to a section of the public of any journalistic, literary or artistic material or of any work of reference²⁸; (f) activities carried out exclusively by means of references to certain documents²⁹; (g) activities carried out with the knowledge or consent of the person about whom, or about whose activities or whereabouts, information is sought, or every person whose interest in any property has been affected by the loss or damage about which information is sought³⁰; (h) activities of any person who carries out any inquiries or investigation merely incidentally to the carrying out of any activities which are not the activities of a security operative³¹.

The activities of security consultants are the giving of advice about the taking of security precautions in relation to any risk to property or to the person³², or the acquisition of any services involving the activities of a security operative³³. The following activities are not the activities of security consultants: (i) the giving of legal or financial advice or the giving of any advice about the conduct of any business involving the provision of the acquisition of any services involving the activities of a security operative³⁴; (ii) any activities of a member of a relevant accountancy body³⁵ which are carried out by him as such and for the purposes of any accountancy practice carried on by him, by any firm of which he is a partner or by which he is employed, by any body corporate of which he is a director or member or by which he is employed³⁶; (iii) the provision of training to persons for the purpose of giving them qualifications, knowledge or skill for use in the carrying out of the activities of a security operative for others³⁷.

Keyholding activities are the keeping custody of, or controlling access to, any key or similar device for operating, whether mechanically, electronically or otherwise, any lock³⁸. Keyholding activities do not include activities carried out merely incidentally to the provision of any services in connection with a proposal for the sale of any premises or other property to which the key or similar device gives access³⁹, or the activities of a person who holds a key or other device for obtaining access to any premises for purposes incidental to the provision in relation to those premises, or in relation to an individual present on those premises, of any services that do not consist in or include the carrying out of any of the activities of a security operative⁴⁰.

1 Private Security Industry Act 2001 s 3(5), Sch 2 para 1(1). The Secretary of State may by order amend Sch 2 Pt 1 (paras 1-6) for the purpose of adding or excluding any such activities as he thinks fit to or from those that fall to be regarded as the activities of a security operative: Sch 2 para 1(2). The Secretary of State may not make an order containing, with or without any other provision, any provision authorised by Sch 2 para 1(2) unless a draft of the order has been laid before Parliament and approved by a resolution of each House: Sch 2 para 1(3). As to the power to make orders see PARA 893 note 3. As to the Secretary of State see PARA 802. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 802 note 21.

2 'Premises' includes any vehicle or moveable structure and any other place whatever, whether or not occupied as land: Private Security Industry Act 2001 s 25(1). As to the meaning of 'vehicle' see PARA 893 note 18.

3 References to guarding premises against unauthorised access include references to being wholly or partly responsible for determining the suitability for admission to the premises of persons applying for admission: Private Security Industry Act 2001 Sch 2 para 2(2).

4 Private Security Industry Act 2001 Sch 2 para 2(1)(a). References to guarding against something happening include references to so providing a physical presence, or carrying out any form of patrol or surveillance, as to deter or otherwise discourage it from happening, or to provide information, if it happens,

about what has happened: Sch 2 para 2(3). Schedule 2 para 2 does not apply to the activities of a person who, incidentally to the carrying out of activities which are not wholly or mainly the activities of a security operative, responds to a sudden or unexpected occurrence: Sch 2 para 2(6). As to the meaning of 'surveillance' see note 17; and as to the meaning of 'information' see PARA 887 note 15.

As to further activities to which Sch 2 para 2 does not apply see Sch 2 para 2(7) (added by SI 2006/1831; and amended by the Offender Management Act 2007 s 13(7); and SI 2007/2201).

- 5 Private Security Industry Act 2001 Sch 2 para 2(1)(b).
- 6 Private Security Industry Act 2001 Sch 2 para 2(1)(c).
- 7 Private Security Industry Act 2001 Sch 2 para 2(4).
- 8 In the exercise of control under the Private Security Industry Act 2001 Sch 2 para 2(4).
- 9 Private Security Industry Act 2001 Sch 2 para 2(5).
- 10 'Motor vehicle' means a mechanically propelled vehicle or a vehicle designed or adapted for towing by a mechanically propelled vehicle: Private Security Industry Act 2001 s 25(1).

11 Private Security Industry Act 2001 Sch 2 para 3(1), (2) (Sch 2 para 3(1) substituted, Sch 2 para 3(2) amended, by SI 2006/1831).

12 Private Security Industry Act 2001 Sch 2 para 3(2A) (added by SI 2005/224; substituted by SI 2006/1831), referring to a road within the meaning of the Road Traffic Act 1988. The removal of an immobilising device from a motor vehicle is only the activity of a security operative if it is carried out in circumstances where it is either proposed to impose a charge for the release of the vehicle or where such a charge has been imposed, and it is carried out in relation to a vehicle which was immobilised while it was elsewhere than on a road: Private Security Industry Act 2001 Sch 2 para 3(2B) (added by SI 2006/1831).

As to activities excluded from the Private Security Industry Act 2001 Sch 2 para 3 see Sch 2 para 3(3A) (added by SI 2006/1831; amended by SI 2007/2201).

- 13 Private Security Industry Act 2001 Sch 2 para 3(3) (substituted by SI 2006/1831).
- 14 Private Security Industry Act 2001 Sch 2 para 3A(1), (2), (2A), (2B), (3) (Sch 2 para 3A added by SI 2005/224; Private Security Industry Act 2001 Sch 2 para 3A(1), (2) amended, Sch 2 para 3A(2A), (2B) added and Sch 2 para 3A(3) substituted, by SI 2006/1831).
- 15 Private Security Industry Act 2001 Sch 2 para 3A(4) (as added: see note 14).
- 16 Private Security Industry Act 2001 Sch 2 para 3A(5) (as added: see note 14). As to further activities excluded from Sch 2 para 3A see Sch 2 para 3A(6), (7) (added by SI 2006/1831).
- 17 'Surveillance' includes covertly listening to or recording conversations or other sounds and any method of covertly obtaining information: Private Security Industry Act 2001 s 25(1). As to the meaning of 'information' see PARA 887 note 15.
- 18 Private Security Industry Act 2001 Sch 2 para 4(1)(a).
- 19 Private Security Industry Act 2001 Sch 2 para 4(1)(b).
- 20 Private Security Industry Act 2001 Sch 2 para 4(2). 'Market research' includes: (1) discovering whether a person is a potential customer for any goods or services or the extent of his satisfaction with goods or services supplied to him; and (2) obtaining information from any person for the purpose of analysing public opinion on any matter, whether or not relating to the market for any goods or services: Sch 2 para 4(10).
- 21 Private Security Industry Act 2001 Sch 2 para 4(3).
- 22 A general qualification refers to a general qualification within the meaning of the Courts and Legal Services Act 1990 s 71 (see COURTS vol 10 (Reissue) PARA 530): Private Security Industry Act 2001 Sch 2 para 4(4).
- 23 As to the meaning of 'member of a firm' see PARA 893 note 5.
- 24 As to the meaning of 'director' see PARA 893 note 4.
- 25 Private Security Industry Act 2001 Sch 2 para 4(4).

26 'Relevant accountancy body' means the Institute of Chartered Accountants in England and Wales, the Institute of Chartered Accountants of Scotland, the Institute of Chartered Accountants in Ireland, the Association of Chartered Certified Accountants, the Chartered Institute of Management Accountants or the Chartered Institute of Public Finance and Accountancy: Private Security Industry Act 2001 s 25(1).

27 Private Security Industry Act 2001 Sch 2 para 4(5).

28 Private Security Industry Act 2001 Sch 2 para 4(6).

29 Private Security Industry Act 2001 Sch 2 para 4(7). The documents referred to are: (1) registers or other records that are open, whether or not on the payment of a fee, to public inspection; (2) registers or other records which are kept by the person by whom or on whose behalf the activities are carried out or to which that person has a right of access; (3) published works: Sch 2 para 4(7).

30 Private Security Industry Act 2001 Sch 2 para 4(8).

31 Private Security Industry Act 2001 Sch 2 para 4(9).

32 Private Security Industry Act 2001 Sch 2 para 5(1)(a).

33 Private Security Industry Act 2001 Sch 2 para 5(1)(b).

34 Private Security Industry Act 2001 Sch 2 para 5(2).

35 As to the meaning of 'relevant accountancy body' see note 26.

36 Private Security Industry Act 2001 Sch 2 para 5(3).

37 Private Security Industry Act 2001 Sch 2 para 5(4).

38 Private Security Industry Act 2001 Sch 2 para 6(1). 'Lock' means a lock or similar device, whether operated mechanically, electronically or otherwise, that is designed or adapted: (1) for protecting any premises against unauthorised entry; or (2) for securing any safe or other container specifically designed or adapted to hold valuables: Sch 2 para 6(4).

39 Private Security Industry Act 2001 Sch 2 para 6(2).

40 Private Security Industry Act 2001 Sch 2 para 6(3).

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LEGISLATIVE CONTROLS/(3) PARTICULAR TRADES/(x) Security Industry/895. Activities subject to additional controls.

895. Activities subject to additional controls.

Manned guarding activities¹ which are carried out in relation to licensed premises², and at or in relation to times when those premises are open to the public³, and activities which relate to the immobilisation of vehicles⁴ or the restriction and removal of vehicles⁵ are subject to additional controls⁶.

'Licensed premises' means: (1) any premises in respect of which a premises licence or temporary event notice has effect under the Licensing Act 2003 to authorise the supply of alcohol⁷ for consumption on the premises⁸; and (2) any premises in respect of which a premises licence or temporary event notice has effect⁹ to authorise the provision of regulated entertainment¹⁰; (3) any premises in respect of which a licence of a prescribed¹¹ description under any prescribed local statutory provision¹² is for the time being in force¹³.

For these purposes, premises are not licensed premises: (a) if there is in force in respect of the premises a premises licence which authorises regulated entertainment¹⁴; (b) in relation to any occasion on which the premises are being used exclusively for the purposes¹⁵ of a club which holds a club premises certificate in respect of the premises, or for regulated entertainment¹⁶ in circumstances where that use is a permitted temporary activity¹⁷; (c) in relation to any occasion on which a casino premises licence or a bingo premises licence is in force in respect of the premises under the Gambling Act 2005 and the premises are being used wholly or mainly for the purposes for which such a licence is required; (d) in relation to any occasion on which a licence is in force in respect of the premises under the Theatres Act 1968¹⁸ and the premises are being used wholly or mainly for the purposes for which the licence is required; (e) in relation to any occasion on which a licence is in force in respect of the premises under the Cinemas Act 1985¹⁹ and the premises are being used wholly or mainly for the purposes for which such a licence is required; or (f) in relation to any such other occasion as may be prescribed²⁰.

1 Ie those activities which are activities of a security operative by virtue of the Private Security Industry Act 2001 Sch 2 para 2: see PARA 894.

2 Private Security Industry Act 2001 s 3(5), Sch 2 para 8(1)(a). Schedule 2 para 8(1) is subject to Sch 2 para 8(1A)-(1C) (Sch 2 para 8(1A), (1B), (1C) added by SI 2006/1831; Private Security Industry Act 2001 Sch 2 para 8(1C) amended, Sch 2 para 8(1BA), (1BB), (1BC) added, by SI 2007/2201; Private Security Industry Act 2001 Sch 2 para 8(1BA) substituted by SSI 2009/248).

3 Private Security Industry Act 2001 Sch 2 para 8(1)(b). See also note 2. The times when premises are open to the public are to be taken to include any time when they are open to a section of the public comprising the individuals who qualify for admission to the premises as the members of a particular club, association or group or otherwise as being persons to whom a particular description applies or in relation to whom particular conditions are satisfied: Sch 2 para 8(4).

4 Ie those activities which are activities of a security operative by virtue of the Private Security Industry Act 2001 Sch 2 para 3: see PARA 894.

5 Ie those activities which are activities of a security operative by virtue of the Private Security Industry Act 2001 Sch 2 para 3A: see PARA 894. As to the meaning of 'vehicle' see PARA 893 note 18.

6 Private Security Industry Act 2001 Sch 2 paras 7(1), 9, 9A (Sch 2 para 9A added by SI 2005/224). The Secretary of State may by order amend the Private Security Industry Act 2001 Sch 2 Pt 2 (paras 7-10) for the purpose of adding or excluding any such activities as he thinks fit to or from those that fall to be regarded as activities subject to additional controls: Sch 2 para 7(2). He may not make an order containing, with or without

any other provision, any provision authorised by Sch 2 para 7(2) unless a draft of the order has been laid before Parliament and approved by a resolution of each House: Sch 2 para 7(3). As to the power to make orders see PARA 893 note 3. As to the Secretary of State see PARA 802. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 802 note 21.

7 Ie within the meaning of the Licensing Act 2003 s 14: see **LICENSING AND GAMBLING** vol 67 (2008) PARA 53.

8 Private Security Industry Act 2001 Sch 2 para 8(2)(a) (Sch 2 para 8(2)(a), (b) substituted by the Licensing Act 2003 s 198(1), Sch 6 para 118(1), (2)).

9 Ie under the Licensing Act 2003.

10 Private Security Industry Act 2001 Sch 2 para 8(2)(b) (as substituted: see note 8).

11 Ie prescribed by regulations made by the Secretary of State, or determined in any such manner and by such person as may be provided for in any such regulations: Private Security Industry Act 2001 s 24(1). As to the power to make regulations see PARA 893 note 3.

12 'Local statutory provision' means: (1) a provision of any local Act; (2) a provision of any instrument in the nature of a local enactment; (3) a provision of any instrument made under a local statutory provision: Private Security Industry Act 2001 s 25(1).

13 Private Security Industry Act 2001 Sch 2 para 8(2)(e).

14 Ie within the Licensing Act 2003 Sch 1 para 2(1)(a) or (b) (plays and films): see **LICENSING AND GAMBLING** vol 67 (2008) PARA 31.

15 References to the occasion on which any premises are being used for a particular purpose include references to any time on that occasion when the premises are about to be used for that purpose, or have just been used for that purpose: Private Security Industry Act 2001 Sch 2 para 8(5).

16 Ie of the kind mentioned in head (a) in the text.

17 Ie by virtue of the Licensing Act 2003 Pt 5 (ss 98-110): see **LICENSING AND GAMBLING** vol 67 (2008) PARAS 108-113.

18 Note that the licensing provisions of the Theatres Act 1968 have been repealed: see the Licensing Act 2003 Sch 6 para 44.

19 Note that the Cinemas Act 1985 has been repealed: see the Licensing Act 2003 Sch 6 para 95.

20 Private Security Industry Act 2001 Sch 2 para 8(3)(a)-(c), (ca), (cb), (d) (Sch 2 para 8(3) substituted by the Licensing Act 2003 Sch 6 para 118(3); Private Security Industry Act 2001 Sch 2 para 8(3)(c) substituted, Sch 2 para 8(3)(ca), (cb) added, by SI 2007/2201).

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LEGISLATIVE CONTROLS/(3) PARTICULAR TRADES/(x) Security Industry/896. Exemptions from the licence requirement.

896. Exemptions from the licence requirement.

If it appears to the Secretary of State¹ that there are circumstances in which licensable conduct² is engaged in only by persons to whom suitable alternative arrangements will apply³, and the Secretary of State is satisfied that, as a consequence, it is unnecessary for persons engaging in any such conduct in those circumstances to be required to be licensed⁴, then he may by regulations⁵ prescribing those circumstances provide that a person is not guilty of an offence⁶ in respect of any conduct engaged in by him in those circumstances⁷.

A person is not guilty of an offence⁸ in respect of any activities of his as a security operative if: (1) he carries out those activities in his capacity as the director⁹ of a body corporate, the partner of any firm¹⁰ or the employee of any person¹¹; (2) he has applied to the Security Industry Authority¹² for the grant of a licence¹³ and that application is pending¹⁴; (3) the licence applied for would authorise him to carry out those activities and is not one he has previously been refused¹⁵; (4) the body, firm or, as the case may be, the employer is a person who is for the time being registered as an approved provider of security industry services¹⁶; and (5) the Authority has given notice to the body, firm or employer that it has authorised that body, firm or employer to use directors, partners or employees whose applications are pending to carry out activities that consist in or include those activities¹⁷.

A relevant employee¹⁸ who engages in licensable conduct will not be guilty of an offence¹⁹ in respect of that conduct if it is carried out in connection with the use of a certified sports ground or certified sports stand for purposes for which its safety certificate has effect²⁰. An employee for a visiting team²¹ who engages in licensable conduct will not be guilty of an offence²² in respect of that conduct if: (a) it is carried out in connection with the use of a certified sports ground or certified sports stand for purposes for which its safety certificate has effect; and (b) that visiting team is involved in the activities for which the ground is being used, or which the stand is being used to view²³.

1 As to the Secretary of State see PARA 802. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 802 note 21.

2 As to the meaning of 'licensable conduct' see PARA 893.

3 Private Security Industry Act 2001 s 4(1)(a).

4 Private Security Industry Act 2001 s 4(1)(b). The reference is to the requirement to be licensed under the Private Security Industry Act 2001.

5 As to the power to make regulations see PARA 893 note 3. As to such regulations, see the Private Security Industry Act 2001 (Exemption) (Aviation Security) Regulations 2006, SI 2006/428 (amended by SI 2007/2504).

6 Is an offence under the Private Security Industry Act 2001 s 3: see PARA 893.

7 Private Security Industry Act 2001 s 4(1). The provision that may be made by regulations under s 4(1) includes provision that a person is not to be guilty of an offence in respect of any conduct which is engaged in by him in the course of his employment by, or otherwise under the direction of, a person who is certified by the Security Industry Authority in accordance with the regulations to be a person who the Authority is satisfied will secure that suitable alternative arrangements apply: s 4(2). References to suitable alternative arrangements are references to arrangements that the Secretary of State or, as the case may be, the Authority is satisfied are equivalent, for all practical purposes so far as the protection of the public is concerned, to those applying to persons applying for and granted licences: s 4(3).

- 8 Ie an offence under the Private Security Industry Act 2001 s 3: see PARA 893.
- 9 As to the meaning of 'director' see PARA 893 note 4.
- 10 As to references to a member of a firm see PARA 893 note 5.
- 11 Private Security Industry Act 2001 s 4(4)(a).
- 12 As to the establishment of the Authority see PARA 887.
- 13 Ie a licence from the Authority under the Private Security Industry Act 2001: see further PARA 893.
- 14 Private Security Industry Act 2001 s 4(4)(b).
- 15 Private Security Industry Act 2001 s 4(4)(c).
- 16 Private Security Industry Act 2001 s 4(4)(d). As to the meaning of 'security industry services' see PARA 887 note 3. As to registration see PARA 903.
- 17 Private Security Industry Act 2001 s 4(4)(e). Section 4(4) applies in the case of a person who carries out activities under directions given by or on behalf of another person in pursuance of a contract for the supply of the services of the first person as if the first person were an employee of the other one: s 4(5).
- 18 In the Private Security Industry Act 2001 s 4 a 'relevant employee', in relation to a certified sports ground or certified sports stand, means a person employed by: (1) the holder of its safety certificate; (2) a person who manages the ground or stand or occupies the premises where it is or owns an interest in those premises; (3) a company which is in the same group as a company falling within head (2): s 4(9) (s 4(6)-(12) added by the Violent Crime Reduction Act 2006 s 63). In the Private Security Industry Act 2001 s 4 'certified sports ground' means a sports ground in respect of which a safety certificate is in force; and 'sports ground' has the same meaning as in the Safety of Sports Grounds Act 1975 (see s 17(1)): Private Security Industry Act 2001 s 4(12) (as so added). As to the meaning of 'safety certificate' see below. 'Certified sports stand' means a sports stand in respect of which a safety certificate is in force; and 'sports stand' means a stand within the meaning of the Fire Safety and Safety of Places of Sport Act 1987 Pt III (ss 26-41) (see s 26(11)): Private Security Industry Act 2001 s 4(12) (as so added). 'Company' has the same meaning as in the Companies Act 2006 s 1159: Private Security Industry Act 2001 s 4(12) (as so added; amended by SI 2009/1941). 'Group', in relation to a company, means a holding company and all of its subsidiaries: Private Security Industry Act 2001 s 4(12) (as so added). 'Holding company' and 'subsidiary' have the same meanings as in the Companies Act 2006 s 1159 (**COMPANIES** vol 14 (2009) PARA 25): Private Security Industry Act 2001 s 4(12) (as so added and amended).
- In s 4 a reference to the use of a certified sports ground for purposes for which the safety certificate has effect is a reference to: (a) the use of the ground for activities specified in a general safety certificate in force in respect of the use of that ground; or (b) the use of the ground, on an occasion specified in a special safety certificate which is so in force, for activities specified in that certificate: s 4(10) (as so added). In s 4 a reference to the use of a certified sports stand for purposes for which the safety certificate has effect is a reference to: (i) the use of the stand for viewing activities specified in a general safety certificate in force in respect of the use of that stand; or (ii) the use of the stand, on an occasion specified in a special safety certificate which is so in force, for viewing activities specified in that certificate: s 4(11) (as so added). 'Safety certificate', 'general safety certificate' and 'special safety certificate' (A) in relation to a sports ground, have the same meanings as in the Safety of Sports Grounds Act 1975 (see ss 1(4), 17(1)); and (B) in relation to a sports stand, have the same meanings as in the Fire Safety and Safety of Places of Sport Act 1987 Pt III (see s 26(2), (11)): Private Security Industry Act 2001 s 4(12) (as so added).
- 19 Ie under the Private Security Industry Act 2001 s 3: see PARA 893.
- 20 Private Security Industry Act 2001 s 4(6) (as added: see note 18).
- 21 In the Private Security Industry Act 2001 s 4 'visiting team', in relation to a certified sports ground (the 'home ground') or a certified sports stand contained in any premises (the 'home premises') means a team which uses as its base, or as one of its bases, any premises which are either: (1) a certified sports ground which is not the home ground (the 'visitors' ground'); or (2) premises which are not the home premises and which contain a certified sports stand (the 'visitors' premises'): s 4(12) (as added: see note 18). 'Visitors' ground' and 'visitors' premises', in relation to a visiting team, have the meanings given by the previous definition: s 4(12) (as so added).
- 22 Ie under the Private Security Industry Act 2001 s 3: see PARA 893.
- 23 Private Security Industry Act 2001 s 4(7) (as added: see note 18). In s 4(7) a reference to a person being an employee for a visiting team is a reference to his being a relevant employee in relation to the visitors'

ground, or in relation to a certified sports stand contained in the visitors' premises: s 4(8) (as added: see note 18).

UPDATE

896 Exemptions from the licence requirement

NOTE 5--SI 2006/428 further amended: SI 2009/2964.

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LEGISLATIVE CONTROLS/(3) PARTICULAR TRADES/(x) Security Industry/897. Offences of using unlicensed security operatives and unlicensed wheel-clampers.

897. Offences of using unlicensed security operatives and unlicensed wheel-clampers.

A person is guilty of the offence¹ of using an unlicensed security operative if he provides any security industry services² to another³, those services are provided wholly or partly by means of the activities of an individual as a security operative⁴, and that individual's activities in connection with the provision of those services involve his engaging in licensable conduct⁵ in respect of which he is not the holder of a licence⁶. In proceedings against any person for such an offence, it is a defence for that person to show either that he did not know, and had no reasonable grounds for suspecting, at the time when the activities were carried out, that the individual in question was not the holder of a licence in respect of those activities⁷, or that he took all reasonable steps, in relation to the services in question, for securing that that individual would not engage in any licensable conduct in respect of which he was not the holder of a licence⁸. A person is not guilty of such an offence in respect of any services in so far as those services are provided by means of conduct in which a person who is not the holder of a licence is entitled⁹ to engage¹⁰.

A person who is an occupier of any premises¹¹ is guilty of the offence of using unlicensed wheel-clampers if: (1) any individual carries out, in relation to vehicles on those premises, any designated activities¹² relating to the immobilisation of vehicles¹³; (2) the carrying out of those activities involves that individual's engaging in licensable conduct in respect of which he is not the holder of a licence¹⁴; and (3) those activities are carried out with the permission of that occupier or for the purposes of, or in connection with, any contract for the supply of services to him¹⁵. In proceedings against any person for such an offence, it is a defence for that person to show either that he did not know, and had no reasonable grounds for suspecting, at the time when the activities were carried out, that the individual in question was not the holder of a licence in respect of those activities¹⁶, or that he took all reasonable steps, in relation to the carrying out of those activities, for securing that that individual would not engage in any licensable conduct in respect of which he was not the holder of a licence¹⁷. A person is not guilty of such an offence in respect of the carrying out of activities which are comprised in any conduct of an individual in which he is entitled¹⁸ to engage¹⁹.

1 As to the criminal liability of directors and similar corporate officers see PARA 893 note 1.

2 As to the meaning of 'security industry services' see PARA 887 note 3.

3 Private Security Industry Act 2001 s 5(1)(a).

4 Private Security Industry Act 2001 s 5(1)(b).

5 As to the meaning of 'licensable conduct' see PARA 893.

6 Private Security Industry Act 2001 s 5(1)(c). As to the meaning of 'licence' see PARA 893 note 2. A person guilty of an offence under s 5 is liable, on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both, and, on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine, or to both: s 5(4). As to the statutory maximum see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 140.

7 Private Security Industry Act 2001 s 5(2)(a).

8 Private Security Industry Act 2001 s 5(2)(b).

- 9 Ie by virtue of the Private Security Industry Act 2001 s 4: see PARA 896.
- 10 Private Security Industry Act 2001 s 5(3).
- 11 As to the meaning of 'premises' see PARA 894 note 2.
- 12 As to the meaning of 'designated activities' see PARA 893 note 3.
- 13 Private Security Industry Act 2001 s 6(1)(a). As to the meaning of 'vehicle' see PARA 893 note 18. As to the immobilisation of vehicles see PARA 894 text and notes 10-12.
- 14 Private Security Industry Act 2001 s 6(1)(b).
- 15 Private Security Industry Act 2001 s 6(1)(c). A person guilty of an offence under s 6 is liable, on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both, and, on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine, or to both: s 6(4).
- 16 Private Security Industry Act 2001 s 6(2)(a).
- 17 Private Security Industry Act 2001 s 6(2)(b).
- 18 Ie by virtue of Private Security Industry Act 2001 s 4.
- 19 Private Security Industry Act 2001 s 6(3).

Halsbury's Laws of England/TRADE AND INDUSTRY (VOLUME 97 (2010) 5TH EDITION)/2.
LEGISLATIVE CONTROLS/(3) PARTICULAR TRADES/(x) Security Industry/898. Licensing criteria.

898. Licensing criteria.

It is the duty of the Security Industry Authority¹, before granting any licences², to prepare and publish a document setting out the criteria which it proposes to apply in determining whether or not to grant a licence³, and the criteria which it proposes to apply in exercising its powers to revoke or modify⁴ a licence⁵. The Authority may from time to time revise the document for the time being setting out the criteria and, if it does so, it must publish the revised document⁶. The criteria must include such criteria as the Authority considers appropriate for securing that the persons who engage in licensable conduct⁷ are fit and proper persons to engage in such conduct⁸, may include such criteria as the Authority considers appropriate for securing that those persons have the training and skills necessary to engage in the conduct for which they are licensed⁹, and may also include criteria relating to such other matters as the Authority thinks fit¹⁰. In setting out any criteria or revised criteria, the Authority may provide for different criteria to apply in relation to licences for different descriptions of licensable conduct¹¹, and in relation to the initial grant of a licence and in relation to a further grant to the same licensee for the purpose of renewing an earlier licence¹².

1 As to the establishment of the Authority see PARA 887.

2 As to the meaning of 'licence' see PARA 893 note 2.

3 Private Security Industry Act 2001 s 7(1)(a).

4 As to the meaning of 'modification' see PARA 887 note 13.

5 Private Security Industry Act 2001 s 7(1)(b). The publication in accordance with s 7 of any document setting out any criteria or revised criteria must be in such manner as the Authority considers appropriate for bringing it to the attention of the persons likely to be affected by it: s 7(6).

6 Private Security Industry Act 2001 s 7(2). Criteria or revised criteria set out under s 7 do not have effect for the purposes of the Private Security Industry Act 2001 unless the Secretary of State has approved them: s 7(5). Before giving such approval, the Secretary of State must consult the Scottish Ministers: s 7(5A) (added by the Serious Organised Crime and Police Act 2005 s 171(1), Sch 15 paras 1, 5). As to the Secretary of State see PARA 802. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 802 note 21.

7 As to the meaning of 'licensable conduct' see PARA 893.

8 Private Security Industry Act 2001 s 7(3)(a).

9 Private Security Industry Act 2001 s 7(3)(b).

10 Private Security Industry Act 2001 s 7(3)(c).

11 Private Security Industry Act 2001 s 7(4)(a).

12 Private Security Industry Act 2001 s 7(4)(b).

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899. Licences to engage in licensable conduct.

The Security Industry Authority¹ may, on an application made to it, grant to the applicant a licence² to engage in any such licensable conduct³ as may be described in the licence⁴. In determining whether or not to grant a licence the Authority must apply the applicable licensing criteria⁵. The Authority may refuse to grant a licence until: (1) it has been satisfied as to the identity of the applicant in such manner as may be prescribed⁶; (2) the applicant has supplemented his application with such further information, if any, as the Authority may request after receiving the application⁷; and (3) the Authority has been able to carry out such further inquiries, if any, in relation to the applicant as it considers appropriate⁸. On the making of an application for the grant of a licence, the applicant must pay to the Authority such fee as may be prescribed⁹.

The power of the Secretary of State to prescribe the conditions on which a licence must be granted and the power of the Authority to impose additional conditions for such a licence includes the power to prescribe or impose: (a) conditions containing requirements as to the training, registration and insurances which the licensee is to undergo, or to maintain, while the licence remains in force¹⁰; (b) conditions as to the manner in which the licensee is to carry out specified activities of a security operative¹¹ that he is licensed to carry out¹²; (c) conditions imposing obligations as to the production and display of the licence¹³; (d) conditions imposing obligations as to the information to be provided from time to time by the licensee to the Authority¹⁴; and (e) such other conditions, whether or not relating to the criteria that would be applied by the Authority in determining whether to grant the licence, as the Secretary of State or the Authority thinks fit¹⁵. Any person who contravenes the conditions of any licence granted to him is guilty of an offence¹⁶.

The Authority may by notice in writing to the licensee modify¹⁷ or revoke any licence granted to him, including any of the conditions of that licence¹⁸. In determining whether or not to modify or revoke a licence, the Authority must apply the applicable licensing criteria¹⁹.

1 As to the establishment of the Authority see PARA 887.

2 As to the meaning of 'licence' see PARA 893 note 2.

3 As to the meaning of 'licensable conduct' see PARA 893.

4 Private Security Industry Act 2001 s 8(1). An application to the Authority for the grant of a licence must be in such form, and must be accompanied by such information, as may be prescribed: s 8(2). As to the meaning of 'information' see PARA 887 note 15; and as to the meaning of 'prescribed' see PARA 895 note 11. As to the power to make regulations see PARA 893 note 3. A licence remains in force for a period of three years beginning with the day on which it is granted or, in any case for which provision as to the duration of the licence is made by the Secretary of State by order, for such other period beginning with that day as may be specified in the order: s 8(8). As to the Secretary of State see PARA 802. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 802 note 21. A licence issued by the Authority under s 8 in respect of any specified person is to remain in force for a period of one year beginning with the day on which it is granted; for this purpose, 'specified person' means one who undertakes any licensable conduct falling within s 3(2)(a), (b), (c), (h) or (j) in relation to the licensable activities set out in Sch 2 para 3 or 3A: Private Security Industry Act 2001 (Duration of Licence) (No 2) Order 2006, SI 2006/3411, art 3. As to the power to make orders see PARA 893 note 3. For the prescribed form of application for the grant of a licence, see the Private Security Industry Act 2001 (Licences) Regulations 2007, SI 2007/810, Sch 1 (substituted by SI 2009/2398).

5 Private Security Industry Act 2001 s 8(3). As to the licensing criteria see PARA 898.

6 Private Security Industry Act 2001 s 8(4)(a).

7 Private Security Industry Act 2001 s 8(4)(b).

8 Private Security Industry Act 2001 s 8(4)(c). A licence granted by the Authority to engage in any description of licensable conduct must be in such form, must contain such information, and must be granted on such conditions, as may be prescribed in relation to licences to engage in that description of licensable conduct: s 8(5). For the prescribed form of licence in relation to activities subject to additional controls, see the Private Security Industry Act 2001 (Licences) Regulations 2007, SI 2007/810, Schs 2, 3. As to activities subject to additional controls see PARA 895. A licence may be granted subject to such conditions, in addition to the prescribed conditions, as the Authority considers appropriate in relation to the licence in question: Private Security Industry Act 2001 s 8(6).

9 Private Security Industry Act 2001 s 8(7). The fee payable in relation to an application for the grant of a licence is £245: Private Security Industry Act 2001 (Licences) Regulations 2007, SI 2007/810, reg 8.

10 Private Security Industry Act 2001 s 9(1)(a).

11 As to the activities of a security operative see PARA 894.

12 Private Security Industry Act 2001 s 9(1)(b).

13 Private Security Industry Act 2001 s 9(1)(c).

14 Private Security Industry Act 2001 s 9(1)(d).

15 Private Security Industry Act 2001 s 9(1)(e). The conditions that may be prescribed or imposed in relation to any description of licence may include conditions imposing obligations on a licensee by reference to requirements made or directions given by the Authority: s 9(2). In relation to a licence authorising licensable conduct of an employer of an individual who in the course of his employment with that employer carries out any designated activities subject to additional controls, the references in s 9(1) to the licensee include references to any of his employees who carry out any designated activities subject to additional controls: s 9(3). As to the meaning of 'designated activities' see PARA 893 note 3. See the Private Security Industry Act 2001 (Licences) Regulations 2007, SI 2007/810, reg 5, which prescribes conditions in relation to certain persons carrying on activities subject to additional controls, and reg 6 (amended by SI 2009/634), which provides additional conditions which must be attached to a licence issued to those conducting specified front line licensable activities. A person holding a licence for certain types of licensable conduct and in respect of certain categories of licensable activity may perform other specified types of licensable activity without holding a separate licence: see the Private Security Industry Act 2001 (Licences) Regulations 2007, SI 2007/810, reg 7 (amended by SI 2007/2504).

16 Private Security Industry Act 2001 s 9(4). A person guilty of an offence under s 9(4) is liable, on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale, or to both: s 9(4). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142. In proceedings against any person for an offence under s 9(4) it is a defence for that person to show that he exercised all due diligence to avoid a contravention of the conditions of the licence: s 9(5). 'Contravention' includes a failure to comply: s 25(1). As to the criminal liability of directors and similar corporate officers see PARA 893 note 1.

17 As to the meaning of 'modification' see PARA 887 note 13.

18 Private Security Industry Act 2001 s 10(1).

19 Private Security Industry Act 2001 s 10(2). As to the licensing criteria see PARA 898. The modifications that may be made under s 10 include one suspending the effect of the licence for such period as the Authority may determine: s 10(3).

Halsbury's Laws of England/TRADE AND INDUSTRY (VOLUME 97 (2010) 5TH EDITION)/2. LEGISLATIVE CONTROLS/(3) PARTICULAR TRADES/(x) Security Industry/900. Appeals in licensing matters.

900. Appeals in licensing matters.

Where an application for a licence is refused¹, a licence is granted subject to conditions², or a licence is modified³ or revoked⁴, the applicant or, as the case may be, the holder of the licence may appeal to a magistrates' court against the Security Industry Authority's⁵ decision to refuse to grant the licence, to impose those conditions or, as the case may be, to modify or to revoke the licence⁶. Where a magistrates' court makes a decision on such an appeal, an appeal to the Crown Court may be brought against that decision either by the Authority or by the person on whose appeal that decision was made⁷.

Where an application for the grant of a licence by way of a renewal is refused or a licence is revoked, the licence to which the application or revocation relates is deemed to remain in force: (1) for the period during which an appeal⁸ may be brought⁹; (2) for the period from the bringing of any such appeal until it is determined or abandoned¹⁰; (3) for the period from any determination on appeal that a licence should be granted until effect is given to that determination, or it is overturned on a further appeal¹¹; (4) during any such period as the magistrates' court or the Crown Court may direct, pending an appeal from a determination made on an appeal to the magistrates' court¹².

1 Private Security Industry Act 2001 s 11(1)(a). As to applications see PARA 899.

2 Private Security Industry Act 2001 s 11(1)(b). The conditions referred to are conditions under s 8(6): see PARA 899 note 8.

3 As to the meaning of 'modification' see PARA 887 note 13.

4 Private Security Industry Act 2001 s 11(1)(c).

5 As to the establishment of the Authority see PARA 887.

6 Private Security Industry Act 2001 s 11(1) (amended by the Courts Act 2003 s 109(1), Sch 8 para 395(1), (2)). See also *Security Industry Authority v Stewart; Rahim v Security Industry Authority; R (on the application of Egenti) v Highgate Justices* [2007] EWHC 2338 (Admin), [2008] 2 All ER 1003. Such an appeal must be brought before the end of the period of 21 days beginning with the day on which the decision appealed against was first notified to the appellant by the Authority: Private Security Industry Act 2001 s 11(2).

7 Private Security Industry Act 2001 s 11(4) (amended by the Serious Organised Crime and Police Act 2005 s 171(1), Sch 15 paras 1, 6(b)). A court to which an appeal is brought under the Private Security Industry Act 2001 s 11 must determine the appeal in accordance with the criteria for the time being applicable under s 7 (see PARA 898): s 11(5).

8 Ie an appeal under the Private Security Industry Act 2001 s 11(1).

9 Private Security Industry Act 2001 s 11(6)(a).

10 Private Security Industry Act 2001 s 11(6)(b).

11 Private Security Industry Act 2001 s 11(6)(c).

12 Private Security Industry Act 2001 s 11(6)(d) (amended by the Courts Act 2003 s 109(1), (3), Sch 8 para 395(4), Sch 10; and the Serious Organised Crime and Police Act 2005 Sch 15 para 6(c)).

Halsbury's Laws of England/TRADE AND INDUSTRY (VOLUME 97 (2010) 5TH EDITION)/2.
LEGISLATIVE CONTROLS/(3) PARTICULAR TRADES/(x) Security Industry/901. Register of
licences.

901. Register of licences.

It is the duty of the Security Industry Authority¹ to establish and maintain a register of persons licensed under the Private Security Industry Act 2001². The Authority must secure that the register contains particulars of every person who for the time being holds a licence³. The particulars that must be recorded in every entry in the register relating to the holder of a licence are: (1) the name of the holder of the licence⁴; (2) an address for the holder of the licence which satisfies the prescribed requirements⁵; (3) the time when the licence will cease to have effect unless renewed⁶; and (4) the terms and other conditions of his licence⁷. It is the duty of the Authority to ensure that such arrangements are in force as it considers appropriate for allowing members of the public and such other persons as it thinks fit to inspect the contents of the register⁸ and securing that such publicity is given to any modification⁹ or revocation of a licence as will bring it to the attention of persons likely to be interested in it¹⁰.

- 1 As to the establishment of the Authority see PARA 887.
- 2 Private Security Industry Act 2001 s 12(1).
- 3 Private Security Industry Act 2001 s 12(2). As to the meaning of 'licence' see PARA 893 note 2.
- 4 Private Security Industry Act 2001 s 12(3)(a).
- 5 Private Security Industry Act 2001 s 12(3)(b). As to the meaning of 'prescribed' see PARA 895 note 11. As to the power to make regulations see PARA 893 note 3.
- 6 Private Security Industry Act 2001 s 12(3)(c).
- 7 Private Security Industry Act 2001 s 12(3)(d).
- 8 Private Security Industry Act 2001 s 12(4)(a). The Authority may impose such fee as it considers reasonable for allowing a person to inspect the register or to take a copy of any part of it: s 12(5).
- 9 As to the meaning of 'modification' see PARA 887 note 13.
- 10 Private Security Industry Act 2001 s 12(4)(b).

Halsbury's Laws of England/TRADE AND INDUSTRY (VOLUME 97 (2010) 5TH EDITION)/2.
LEGISLATIVE CONTROLS/(3) PARTICULAR TRADES/(x) Security Industry/902. Licensing at a local authority level.

902. Licensing at a local authority level.

The Secretary of State¹ may by order² make provision for local authorities³ to carry out some or all of the Security Industry Authority's⁴ relevant licensing functions⁵ in relation to such cases and such areas, and for such purposes, as may be specified or described in the order⁶. Such an order may: (1) impose such conditions and requirements in respect of the carrying out of any of the Authority's relevant licensing functions by a local authority as the Secretary of State thinks fit⁷; (2) provide for any of those conditions or requirements to be framed by reference to directions given by the Secretary of State in accordance with the order⁸; (3) provide for any of the powers exercisable by a local authority by virtue of such an order to be exercisable concurrently in relation to the same case by the Authority and that local authority⁹; and (4) authorise a local authority to retain any fee paid to it¹⁰.

1 As to the Secretary of State see PARA 802. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 802 note 21.

2 As to the power to make orders see PARA 893 note 3.

3 'Local authority' means: (1) the council for any county or district in England other than a metropolitan county the districts comprised in which are districts for which there are councils; (2) the council for any London borough; (3) the Common Council of the City of London; (4) the Council of the Isles of Scilly; (5) the council for any county or county borough in Wales: Private Security Industry Act 2001 s 13(7).

4 As to the establishment of the Authority see PARA 887.

5 The Authority's relevant licensing functions are such of its functions under the Private Security Industry Act 2001, other than s 7 (see PARA 898), as relate to the grant, revocation or modification of licences to engage in any such licensable conduct as will or may involve, or relate to, the carrying out of activities to which Sch 2 para 8 (see PARA 895) applies: s 13(2). As to the meaning of 'modification' see PARA 887 note 13. As to the meaning of 'licensable conduct' see PARA 893.

6 Private Security Industry Act 2001 s 13(1). Section 11 (appeals: see PARA 900) applies in relation to a decision made by a local authority in accordance with an order under s 13(1) as it applies in relation to a decision of the Authority: s 13(4). Where s 11 so applies, it has effect as if the references in s 11(2) and (4) to the Authority were a reference to the local authority that made the decision in question: s 13(4). The Secretary of State may by order make such provision repealing or modifying the provisions of any local enactment as he considers appropriate in consequence of the coming into force of any of the provisions of the Private Security Industry Act 2001 or of an order under s 13(1): s 13(5). The Secretary of State must consult the Authority before making an order under s 13: s 13(6). In exercise of the power under s 3(5) the following orders have been made: the Private Security Industry Act 2001 (Modification of Local Enactments) Order 2004, SI 2004/916; the Private Security Industry Act 2001 (Repeal and Revocation) Order 2004, SI 2004/3145; and the Private Security Industry Act 2001 (Repeal and Revocation) Order 2005, SI 2005/248.

7 Private Security Industry Act 2001 s 13(3)(a).

8 Private Security Industry Act 2001 s 13(3)(b).

9 Private Security Industry Act 2001 s 13(3)(c).

10 Private Security Industry Act 2001 s 13(3)(d). Ie the fee paid to it by virtue of s 8(7) (see PARA 899 text and note 9).

Halsbury's Laws of England/TRADE AND INDUSTRY (VOLUME 97 (2010) 5TH EDITION)/2. LEGISLATIVE CONTROLS/(3) PARTICULAR TRADES/(x) Security Industry/903. Register of approved contractors.

903. Register of approved contractors.

It is the duty of the Security Industry Authority¹ to establish and maintain a register of approved providers of security industry services². The Authority must secure that the register contains particulars of every person who is for the time being approved under arrangements for the grant of approvals³. The particulars that must be recorded in every entry in the register relating to an approved person are: (1) the name of that person⁴; (2) an address for that person which satisfies the prescribed requirements⁵; (3) the services in respect of which that person is approved⁶; (4) the time when the approval will cease to have effect unless renewed⁷; and (5) the conditions of the approval⁸. It is the duty of the Authority to ensure that such arrangements are in force as it considers appropriate for allowing members of the public to inspect the contents of the register⁹ and securing that such publicity is given to any modification¹⁰ or withdrawal of an approval as will bring it to the attention of persons likely to be interested in it¹¹.

- 1 As to the establishment of the Authority see PARA 887.
- 2 Private Security Industry Act 2001 s 14(1). As to the meaning of 'security industry services' see PARA 887 note 3.
- 3 Private Security Industry Act 2001 s 14(2). As to such approvals see s 15; and PARA 904.
- 4 Private Security Industry Act 2001 s 14(3)(a).
- 5 Private Security Industry Act 2001 s 14(3)(b). As to the meaning of 'prescribed' see PARA 895 note 11. As to the power to make regulations see PARA 893 note 3.
- 6 Private Security Industry Act 2001 s 14(3)(c).
- 7 Private Security Industry Act 2001 s 14(3)(d).
- 8 Private Security Industry Act 2001 s 14(3)(e).
- 9 Private Security Industry Act 2001 s 14(4)(a). The Authority may impose such fee as it considers reasonable for allowing a person to inspect the register or to take a copy of any part of it: s 14(5).
- 10 As to the meaning of 'modification' see PARA 887 note 13.
- 11 Private Security Industry Act 2001 s 14(4)(b).

Halsbury's Laws of England/TRADE AND INDUSTRY (VOLUME 97 (2010) 5TH EDITION)/2. LEGISLATIVE CONTROLS/(3) PARTICULAR TRADES/(x) Security Industry/904. Grant of approvals.

904. Grant of approvals.

It is the duty of the Security Industry Authority¹ to secure that there are arrangements in force for granting approvals to persons who are providing security industry services² in the United Kingdom and seek approval in respect of any such services that they are providing, or are proposing to provide³. The arrangements must: (1) allow for an approval to be granted either in respect of all the services in respect of which it is sought or in respect of only some of them⁴; (2) ensure that an approval is granted to a person in respect of any services only if the condition⁵ for the grant of an approval is satisfied⁶; (3) provide for an approval granted to any person to have effect subject to such conditions, whether or not connected with the provision of the services in respect of which the approval is granted, as may be contained in the approval⁷; (4) enable a person to whom the Authority is proposing to grant an approval to refuse it if the proposal is in different terms from the approval which was sought⁸; (5) make provision for the handling of complaints and disputes which: (a) are required by the conditions of an approved person's approval to be dealt with in accordance with a procedure maintained by him in pursuance of those conditions; but (b) are not disposed of by the application of that procedure⁹; (6) provide for an approval to cease to have effect, unless renewed: (a) except in a case to which head (b) below applies, at the end of the period of three years beginning with the day on which it is granted¹⁰; and (b) in a case for which provision as to the duration of the approval is made by the Secretary of State by order, for such other period beginning with that day as may be specified in the order¹¹; (7) provide for the modification¹² and withdrawal of approvals¹³.

The Authority may approve the terms in which a person who is for the time being registered¹⁴ as an approved provider of security industry services may hold himself out as so registered¹⁵. A person is guilty of an offence¹⁶ if he holds himself out as registered¹⁷ as an approved provider of any security industry services when he is not so registered¹⁸, or he is so registered but holds himself out as so registered in terms that have not been approved by the Authority in relation to his case¹⁹.

The Secretary of State may by regulations provide that persons of prescribed descriptions are to be prohibited from providing prescribed security industry services unless they are for the time being approved in respect of those services²⁰. As from a day to be appointed, a person who is approved in respect of any security industry services²¹, and would be prohibited²² from providing those services except while for the time being so approved, is guilty of an offence if he contravenes any of the conditions of his approval in respect of those services²³. The Secretary of State may by regulations make provision in relation to cases in which a person is required by regulations²⁴ to be approved in respect of any services²⁵ for the conditions that are to be contained in his approval in relation to the handling of complaints made about the provision of those services²⁶, and generally in relation to the arrangements²⁷ that are to be made for such cases²⁸.

1 As to the establishment of the Authority see PARA 887.

2 As to the meaning of 'security industry services' see PARA 887 note 3.

3 Private Security Industry Act 2001 s 15(1) (amended by the Justice and Security (Northern Ireland) Act 2007 ss 48(5), 49(1), (4)). As to the meaning of 'United Kingdom' see PARA 806 note 7.

4 Private Security Industry Act 2001 s 15(2)(a).

5 The condition referred to is that the Authority is satisfied that the person to whom approval is to be granted: (1) will comply, in providing the services in respect of which he is approved, with such technical and other requirements as may be prescribed (see the Private Security Industry Act 2001 (Approved Contractor Scheme) Regulations 2007, SI 2007/808 (amended by SI 2007/2504; and SI 2009/633)); (2) is a person in relation to whom such other requirements as may be prescribed are, and will continue to be, satisfied; (3) is, and will continue to be, able and willing to comply with any requirements that the Authority is proposing to impose by means of conditions of the approval; and (4) is otherwise a fit and proper person to be approved in respect of those services: Private Security Industry Act 2001 s 15(3). As to the meaning of 'prescribed' see PARA 895 note 11. As to the power to make regulations see PARA 893 note 3. Regulations made by virtue of head (1) or (2) may frame a requirement for the purposes of s 15(3) by reference to the opinion of a person specified in the regulations, or of a person chosen in a manner determined in accordance with the regulations: s 15(4). The requirements which may be imposed by conditions contained in an approval in accordance with the arrangements include: (a) requirements to provide information to such persons, in such form, at such times and in response to such requests as may be specified in or determined under the terms of the condition; (b) requirements framed by reference to the opinion or directions of a person specified in or chosen in accordance with provision contained in the conditions: s 15(5). However, nothing in the arrangements may authorise the imposition, by conditions contained in an approval, of any requirements for: (i) the provision of information; or (ii) the maintenance of a procedure for handling complaints or disputes, in relation to any matter other than one appearing to the Authority to be relevant to the matters mentioned in heads (1)-(4): s 15(6). Any requirement to provide information that is imposed in accordance with the arrangements on any person by the conditions of his approval is enforceable at the suit or instance of the Authority: s 15(7). As to the meaning of 'information' see PARA 887 note 15.

6 Private Security Industry Act 2001 s 15(2)(b).

7 Private Security Industry Act 2001 s 15(2)(c).

8 Private Security Industry Act 2001 s 15(2)(d).

9 Private Security Industry Act 2001 s 15(2)(e).

10 Private Security Industry Act 2001 s 15(2)(f)(i).

11 Private Security Industry Act 2001 s 15(2)(f)(ii). As to the Secretary of State see PARA 802. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 802 note 21. As to the power to make orders see PARA 893 note 3.

12 As to the meaning of 'modification' see PARA 887 note 13.

13 Private Security Industry Act 2001 s 15(2)(g). Where any arrangements under s 15 so provide, a person who seeks an approval under the arrangements, applies for a modification of such an approval, is for the time being approved under the arrangements, or has his approval under the arrangements modified wholly or partly in consequence of an application made by him, he must pay to the Authority, at such time or times as may be prescribed, such fee or fees as may be prescribed in relation to that time or those times: s 15(8).

14 He registered under the Private Security Industry Act 2001 s 14: see PARA 903.

15 Private Security Industry Act 2001 s 16(1).

16 As to the criminal liability of directors and similar corporate officers see PARA 893 note 1.

17 References to a person's holding himself out as registered as an approved provider of any services include references to his holding himself out to be a person who is for the time being approved in respect of those services in accordance with arrangements under the Private Security Industry Act 2001 s 15: s 16(4).

18 Private Security Industry Act 2001 s 16(2)(a).

19 Private Security Industry Act 2001 s 16(2)(b). A person guilty of such an offence is liable on summary conviction, to a fine not exceeding the statutory maximum, and on conviction on indictment, to a fine: s 16(3). As to the statutory maximum see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 140.

20 Private Security Industry Act 2001 s 17(1) (in force for the purpose of making regulations: see the Private Security Industry Act 2001 (Commencement No 1) Order 2002, SI 2002/3125). As from a day to be appointed, a person is guilty of an offence if he contravenes any prohibition imposed on him by regulations under the Private Security Industry Act 2001 s 17(1): s 17(2) (in force as from a day to be appointed; at the date at which this volume states the law, no such day had been appointed). As to the meaning of 'contravention' see PARA 899 note 16.

21 le approved in accordance with arrangements under the Private Security Industry Act 2001 s 15: see text and notes 1-13.

22 le prohibited by regulations under the Private Security Industry Act 2001 s 17(1).

23 Private Security Industry Act 2001 s 17(3). A person guilty of an offence under s 17 is liable, on summary conviction, to a fine not exceeding the statutory maximum, and, on conviction on indictment, to a fine: s 17(4). Section 17(3), (4) is in force as from a day to be appointed; at the date at which this volume states the law, no such day had been appointed.

24 le required by regulations under the Private Security Industry Act 2001 s 17(1).

25 le approved in accordance with arrangements under the Private Security Industry Act 2001 s 15: s 17(5).

26 Private Security Industry Act 2001 s 17(5)(a) (in force for the purpose of making regulations: see the Private Security Industry Act 2001 (Commencement No 1) Order 2002, SI 2002/3125).

27 le arrangements under the Private Security Industry Act 2001 s 15: s 17(5) (in force for the purpose of making regulations: see the Private Security Industry Act 2001 (Commencement No 1) Order 2002, SI 2002/3125).

28 Private Security Industry Act 2001 s 17(5)(b) (in force for the purpose of making regulations: see the Private Security Industry Act 2001 (Commencement No 1) Order 2002, SI 2002/3125).

Halsbury's Laws of England/TRADE AND INDUSTRY (VOLUME 97 (2010) 5TH EDITION)/2. LEGISLATIVE CONTROLS/(3) PARTICULAR TRADES/(x) Security Industry/905. Appeals relating to approvals.

905. Appeals relating to approvals.

Where an application for an approval¹ is refused², conditions are included as conditions of such an approval³, or such an approval is modified⁴ or withdrawn⁵, the applicant or, as the case may be, the approved person may appeal to a magistrates' court against the Security Industry Authority's⁶ decision to refuse to grant the approval, to include those conditions or, as the case may be, to modify or to withdraw the approval⁷. Where a magistrates' court makes a decision on such an appeal, an appeal to the Crown Court may be brought against that decision either by the Authority or by the person on whose appeal that decision was made⁸.

Where an application for the grant of an approval by way of a renewal is refused or an approval is withdrawn, the approval to which the application or withdrawal relates is deemed to remain in force: (1) for the period during which an appeal⁹ may be brought¹⁰; (2) for the period from the bringing of any such appeal until it is determined or abandoned¹¹; (3) for the period from any determination on appeal that an approval should be granted until effect is given to that determination, or it is overturned on a further appeal¹²; (4) during any such period as the magistrates' court or the Crown Court may direct, pending an appeal from a determination made on an appeal to the magistrates' court¹³.

1 Be an approval under the Private Security Industry Act 2001 s 15: see PARA 904.

2 Private Security Industry Act 2001 s 18(1)(a).

3 Private Security Industry Act 2001 s 18(1)(b).

4 As to the meaning of 'modification' see PARA 887 note 13.

5 Private Security Industry Act 2001 s 18(1)(c).

6 As to the establishment of the Authority see PARA 887.

7 Private Security Industry Act 2001 s 18(1) (amended by the Courts Act 2003 s 109(1), Sch 8 para 396(1), (2)). Such an appeal must be brought before the end of the period of 21 days beginning with the day on which the decision appealed against was first notified to the appellant by the Authority: Private Security Industry Act 2001 s 18(2).

8 Private Security Industry Act 2001 s 18(4) (amended by the Serious Organised Crime and Police Act 2005 s 171(1), Sch 15 paras 1, 9(b)).

9 Be an appeal under the Private Security Industry Act 2001 s 18(1).

10 Private Security Industry Act 2001 s 18(5)(a).

11 Private Security Industry Act 2001 s 18(5)(b).

12 Private Security Industry Act 2001 s 18(5)(c).

13 Private Security Industry Act 2001 s 18(5)(d)(i) (amended by the Courts Act 2003 Sch 8 para 396(4); renumbered by the Serious Organised Crime and Police Act 2005 Sch 15 para 9(c)).

Halsbury's Laws of England/TRADE AND INDUSTRY (VOLUME 97 (2010) 5TH EDITION)/2. LEGISLATIVE CONTROLS/(3) PARTICULAR TRADES/(x) Security Industry/906. Powers of entry and inspection.

906. Powers of entry and inspection.

A person authorised in writing for the purpose by the Security Industry Authority¹ may enter any premises² owned or occupied by any person appearing to him to be a regulated person³ other than premises occupied exclusively for residential purposes as a private dwelling⁴. A person exercising such a power must: (1) comply with any reasonable request made, whether before or after entry is gained to the premises, by any person present on the premises to do any one or more of the following: (a) state the purpose for which the power is being exercised⁵; (b) show the authorisation by the Authority for his exercise of the power⁶; (c) produce evidence of his identity⁷; (2) make a record of the date and time of his entry, the period for which he remained there and his conduct while there⁸; and (3) if requested to do so by any person present on the premises at the time of the entry, provide that person with a copy of that record⁹.

A person authorised in writing for the purpose by the Authority may require any person appearing to him to be a regulated person to produce to him any documents or other information¹⁰ relating to any matter connected with: (i) any licensable conduct¹¹ which has been or may be engaged in by the person so appearing¹²; (ii) the provision by the person so appearing of any security industry services¹³; (iii) any matters in respect of which conditions are imposed on the person so appearing by virtue of a licence¹⁴ or of an approval¹⁵.

It is the duty of the Authority to prepare and publish a document containing its guidance as to the manner in which persons authorised to enter premises should exercise that power and conduct themselves after entering premises in exercise of that power¹⁶.

A person is guilty of an offence¹⁷ if for any purposes connected with the carrying out by the Authority of any of its functions under the Private Security Industry Act 2001, he makes any statement to the Authority which he knows to be false in a material particular¹⁸, or he recklessly makes any statement to the Authority which is false in a material particular¹⁹.

1 As to the establishment of the Authority see PARA 887.

2 As to the meaning of 'premises' see PARA 894 note 2.

3 'Regulated person' means: (1) the holder of any licence granted under the Private Security Industry Act 2001; (2) any person who engages in licensable conduct without being the holder of a licence under the Private Security Industry Act 2001; (3) any person who is for the time being approved in accordance with arrangements under s 15 (see PARA 904) in respect of any services which regulations under s 17 (see PARA 904) prohibit him from providing unless so approved; or (4) any person who is not so approved but provides security industry services which he is prohibited by any such regulations from providing: s 19(8). As to the meaning of 'security industry services' see PARA 887 note 3.

4 Private Security Industry Act 2001 s 19(1). A person exercising this power may do so only at a reasonable hour: s 19(3).

A person is guilty of an offence if he intentionally obstructs any person in the exercise of any power conferred by s 19(1): s 19(5)(a). A person guilty of an offence under s 19 is liable, on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale, or to both: s 19(7). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

5 Private Security Industry Act 2001 s 19(4)(a)(i).

6 Private Security Industry Act 2001 s 19(4)(a)(ii).

- 7 Private Security Industry Act 2001 s 19(4)(a)(iii).
- 8 Private Security Industry Act 2001 s 19(4)(b).
- 9 Private Security Industry Act 2001 s 19(4)(c).
- 10 As to the meaning of 'information' see PARA 887 note 15.
- 11 As to the meaning of 'licensable conduct' see PARA 893.
- 12 Private Security Industry Act 2001 s 19(2)(a).
- 13 Private Security Industry Act 2001 s 19(2)(b). As to the meaning of 'security industry services' see PARA 887 note 3.
- 14 As to the meaning of 'licence' see PARA 893 note 2.
- 15 Private Security Industry Act 2001 s 19(2)(c). The approval referred to is an approval granted in accordance with arrangements under s 15 (see PARA 904).

A person is guilty of an offence if he fails, without reasonable excuse, to comply with any requirement imposed by s 19(2); s 19(5)(b). A person is guilty of an offence if he makes an unauthorised disclosure of any information obtained by him in the exercise of any power conferred by s 19, or as a consequence of the exercise of any such power by another: s 19(5)(c). Such a disclosure of information is authorised if, and only if, it is made for the purposes of the carrying out by the Authority of any of its functions under the Private Security Industry Act 2001 or for the purposes of any criminal proceedings: s 19(6). As to the criminal liability of directors and similar corporate officers see PARA 893 note 1.

16 Private Security Industry Act 2001 s 20(1). The Authority may from time to time revise such guidance and, if it does so, it must publish the revised guidance: s 20(2). The requirement for the Authority to publish guidance or revised guidance is a requirement to publish it in such manner as appears to the Authority appropriate for bringing it to the attention of persons likely to be affected by it: s 20(3).

- 17 As to the criminal liability of directors and similar corporate officers see PARA 893 note 1.
- 18 Private Security Industry Act 2001 s 22(1)(a).
- 19 Private Security Industry Act 2001 s 22(1)(b).

A person guilty of an offence under s 22 is liable, on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale, or to both: s 22(2). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

Halsbury's Laws of England/TRADE AND INDUSTRY (VOLUME 97 (2010) 5TH EDITION)/3.
SHOPS/(1) Deregulation of Shops/907. In general.

3. SHOPS

(1) Deregulation of Shops

907. In general.

The Shops Act 1950, the Shops (Airports) Act 1962 and the Shops (Early Closing Days) Act 1965 subjected shops to detailed restrictions in relation to hours of closing, conditions of employment, the hours of employment of young persons and relatively strict rules on Sunday trading. Such restrictions have now been abolished¹, except in the case of Sunday trading².

1 See the Employment Act 1989 ss 10, 29(4), Sch 3, Sch 7 (Schs 3, 7 partly repealed); the Deregulation and Contracting Out Act 1994 ss 23, 24, 81(1), Sch 17 (ss 23, 24 repealed); and the Sunday Trading Act 1994 ss 1(2), 9(2), Sch 5.

2 As to Sunday trading see PARA 908 et seq.

Halsbury's Laws of England/TRADE AND INDUSTRY (VOLUME 97 (2010) 5TH EDITION)/3.
SHOPS/(2) SUNDAY TRADING/(i) In general/908. Restrictions on Sunday opening of large shops.

(2) SUNDAY TRADING

(i) In general

908. Restrictions on Sunday opening of large shops.

Formerly, trading on Sunday was severely restricted¹. The restricting provisions were repealed by the Sunday Trading Act 1994² and such restrictions as are now in force relate only to large shops³. A large shop must not be open on Sunday for the serving of retail customers⁴; but that prohibition does not apply:

- 157 (1) if it falls within a category of exempt shops⁵;
- 158 (2) if it is occupied by persons observing the Jewish Sabbath and a relevant notice has effect⁶; or
- 159 (3) in relation to the opening of a large shop during any continuous period of six hours on a Sunday beginning no earlier than 10 am and ending no later than 6 pm⁷.

The above provisions⁸ do not apply where the Sunday is Christmas Day⁹.

If the above provisions are contravened in relation to a shop, the occupier of the shop is liable on summary conviction to a fine not exceeding £50,000¹⁰. Where a person is charged with having contravened the above provisions in relation to a large shop which was permitted to be open for the serving of retail customers on the Sunday in question, by reason of his having served a retail customer after the end of the period during which the shop is permitted to be open, it is a defence to prove that the customer was in the shop before the end of that period and left not later than half an hour after the end of that period¹¹.

1 Ie by the Shops Act 1950 Pt IV (ss 47-67) (repealed).

2 Ie by the Sunday Trading Act 1994 ss 1(2), 9(2), Sch 5. Under the Sunday Trading Act 1994 the Secretary of State may by order made by statutory instrument: (1) repeal any provision of a local Act passed before or in the same session as the Sunday Trading Act 1994 if it appears to him that the provision is inconsistent with, or has become unnecessary in consequence of, any provision of the 1994 Act; and (2) amend any provision of such a local Act if it appears to him that the provision requires amendment in consequence of any provision of the 1994 Act or any repeal made by virtue of head (1): s 6(1). Before he makes such an order repealing or amending any provision of a local Act, it is the Secretary of State's duty to consult each local authority which he considers would be affected by the repeal or amendment of that provision: Sunday Trading Act 1994 s 6(2). A statutory instrument containing such an order is subject to annulment in pursuance of a resolution of either House of Parliament: s 6(3). See PARLIAMENT vol 34 (Reissue) PARA 945. As to the Secretary of State see PARA 802. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 802 note 21.

For these purposes, 'local authority' means any unitary authority or any district council, so far as it is not a unitary authority: s 8(1). 'Unitary authority' means: (a) the council of any county, so far as it is the council for an area for which there are no district councils; (b) the council of any district comprised in an area for which there is no county council; (c) a county borough council; (d) a London borough council; (e) the Common Council of the City of London; or (f) the Council of the Isles of Scilly: s 8(2).

3 For these purposes, 'shop' means any premises where there is carried on a trade or business consisting wholly or mainly of the sale of goods (Sunday Trading Act 1994 s 1(1), Sch 1 para 1); and 'large shop' means a shop which has a relevant floor area exceeding 280 square metres (Sch 1 para 1). 'Relevant floor area', in relation to a shop, means the internal floor area of so much of the shop as consists of, or is comprised in, a

building, but excluding any part of the shop which, throughout the week ending with the Sunday in question, is used neither for the serving of customers in connection with the sale of goods nor for the display of goods: Sch 1 para 1. 'Sale of goods' does not include: (1) the sale of meals, refreshments or alcohol for consumption on the premises on which they are sold; or (2) the sale of meals or refreshments prepared to order for immediate consumption off those premises: Sch 1 para 1 (amended by the Licensing Act 2003 s 198(1), Sch 6 para 110(1), (2)(b)). 'Alcohol' has the same meaning as in the Licensing Act 2003 (see **LICENSING AND GAMBLING** vol 67 (2008) PARA 30); Sunday Trading Act 1994 Sch 1 para 1 (definition added by the Licensing Act 2003 Sch 6 para 110(2) (a)).

4 Sunday Trading Act 1994 Sch 1 para 2(1). For these purposes, 'retail customer' means a person who purchases goods retail: Sch 1 para 1. As to the meaning of references to retail purchases see PARA 910 note 8. A shop may still be a large shop, even though only a small part of the whole shop is open to retail customers: *Haskins Garden Centres Ltd v East Dorset District Council* [1998] EGCS 71, DC.

The Sunday Trading Act 1994 Sch 1 para 2(1) does not apply to any large shop situated in that part of the terminal area of the tunnel system located at the portals of the tunnels in the vicinity of Cheriton, Folkestone, that is within the area shown coloured blue on the deposited plan: Channel Tunnel (Sunday Trading Act 1994) (Disapplication) Order 1994, SI 1994/3286, art 3. 'Deposited plan' means the plan marked 'The Channel Tunnel (Sunday Trading Act 1994) (Disapplication) Order 1994', signed by authority of the Secretary of State for Transport, dated 22 November 1994 and deposited at the Department of the Environment, Transport and the Regions, Parliamentary Library, Room P3/001, 2 Marsham Street, London SW1P 3EB; and 'shop' has the same meaning as in the Sunday Trading Act 1994 (see note 3): Channel Tunnel (Sunday Trading Act 1994) (Disapplication) Order 1994, SI 1994/3286, art 2; Interpretation Act 1978 s 17(2)(a).

5 See the Sunday Trading Act 1994 Sch 1 para 2(2)(a); and PARA 910.

6 See the Sunday Trading Act 1994 Sch 1 para 2(2)(b); and PARA 912.

7 See the Sunday Trading Act 1994 Sch 1 para 2(3) (substituted by SI 2004/470); and PARA 911. The exemption so conferred does not apply where the Sunday is Easter Day: Sch 1 para 2(4) (amended by the Christmas Day (Trading) Act 2004 s 4(1), (2)(a)).

8 Ie the Sunday Trading Act 1994 Sch 1 para 2(1): see text and note 4.

9 See the Sunday Trading Act 1994 Sch 1 para 2(5) (added by the Christmas Day (Trading) Act 2004 s 4(2) (b)); and PARA 909.

10 Sunday Trading Act 1994 Sch 1 para 7(1). As to the enforcement of the Sunday Trading Act 1994, and as to the general provisions relating to offences thereunder, see PARAS 916-917.

11 Sunday Trading Act 1994 Sch 1 para 8 (substituted by SI 2004/470).

Halsbury's Laws of England/TRADE AND INDUSTRY (VOLUME 97 (2010) 5TH EDITION)/3.
SHOPS/(2) SUNDAY TRADING/(i) In general/909. Restrictions on Christmas Day opening of large shops.

909. Restrictions on Christmas Day opening of large shops.

A large shop¹ must not be open on Christmas Day for the serving of retail customers².

Where a shop which is prohibited from opening on Christmas Day is located in a loading control area³, the occupier of the shop must not load or unload, or permit any other person to load or unload, goods from a vehicle at the shop before 9 am on Christmas Day in connection with the trade or business being carried on at the shop, unless the loading or unloading is carried on with the consent⁴ of the local authority for the area in which the shop is situated, and in accordance with any conditions subject to which that consent is granted⁵.

Every local authority⁶ has a duty to enforce the above provisions within its area⁷ and, for the purposes of that duty, to appoint inspectors⁸.

1 'Large shop' has the same meaning as in the Sunday Trading Act 1994 Sch 1 (see PARA 908 note 3), except that for these purposes the definition of 'relevant floor area' in Sch 1 para 1 (see PARA 908 note 3) is to be read as if the reference to the week ending with the Sunday in question were a reference to the period of seven days ending with the Christmas Day in question: Christmas Day (Trading) Act 2004 s 1(5).

2 Christmas Day (Trading) Act 2004 s 1(1). 'Retail customer' has the same meaning as in the Sunday Trading Act 1994 Sch 1 (see PARA 908 note 4): Christmas Day (Trading) Act 2004 s 1(5). Section 1(1) does not apply to a shop mentioned in the Sunday Trading Act 1994 Sch 1 para 3(1) (see PARA 910 text and notes 1-19); and 'shop' has the same meaning as in Sch 1 (see PARA 908 note 3): Christmas Day (Trading) Act 2004 s 1(2), (5). For the purposes of s 1(2), the Sunday Trading Act 1994 Sch 1 para 3(2) (see PARA 910 text and note 20) has effect as if the reference to weekdays were a reference to days of the year other than Christmas Day, and the reference to Sunday were a reference to Christmas Day: Christmas Day (Trading) Act 2004 s 1(4). If s 1(1) is contravened in relation to a shop, the occupier of the shop is liable on summary conviction to a fine not exceeding £50,000: s 1(3).

3 'Loading control area' means any area designated by a local authority as a loading control area in accordance with the Sunday Trading Act 1994 s 2 (see PARA 913): Christmas Day (Trading) Act 2004 s 2(4).

4 In relation to consent, the provisions of the Sunday Trading Act 1994 Sch 8 paras 3-8 (see PARA 913 notes 5-6) apply as they apply in relation to consent under Sch 3, but as if the reference in Sch 3 para 6(1) to Sunday were a reference to Christmas Day, and the reference in Sch 3 para 7(a) to an offence under Sch 3 para 9 were a reference to an offence under the Christmas Day (Trading) Act 2004 s 2(3) (see note 5): s 2(2).

5 Christmas Day (Trading) Act 2004 s 2(1). A person who contravenes s 2(1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 2(3). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

6 'Local authority' has the meaning given by the Sunday Trading Act 1994 s 8 (see PARA 908 note 2): Christmas Day (Trading) Act 2004 s 3(5).

7 Christmas Day (Trading) Act 2004 s 3(1).

8 Christmas Day (Trading) Act 2004 s 3(2). Such inspectors may be the same persons as those appointed as inspectors by the local authority under the Sunday Trading Act 1994 Sch 2 para 2 (see PARA 916 text and note 4): Christmas Day (Trading) Act 2004 s 3(2). The Sunday Trading Act 1994 Sch 2 paras 3, 4 (see PARA 916 text and notes 6-7) apply in respect of inspectors appointed under the Christmas Day (Trading) Act 2004 s 3(2) as they apply to inspectors appointed under the Sunday Trading Act 1994 Sch 2 para 2 and, for the purposes of Sch 2 para 3 (as so applied), the reference to the provisions of Schs 1, 3 is to be taken as a reference to the provisions of the Christmas Day (Trading) Act 2004 ss 1, 2: s 3(3). The Sunday Trading Act 1994 Sch 2 paras 5-7 (see PARA 916 text and notes 9-11) apply in respect of the offences under the Christmas Day (Trading) Act 2004 ss 1, 2 as they apply in respect of offences under the Sunday Trading Act 1994: Christmas Day (Trading) Act 2004 s 3(4).

Halsbury's Laws of England/TRADE AND INDUSTRY (VOLUME 97 (2010) 5TH EDITION)/3.
SHOPS/(2) SUNDAY TRADING/(i) In general/910. Exempt shops.

910. Exempt shops.

The general prohibition on large shops¹ opening on Sunday² does not apply to the following³:

- 160 (1) any shop which is at a farm and where the trade or business carried on consists wholly or mainly of the sale of produce from that farm⁴;
 - 161 (2) any shop where the trade or business carried on consists wholly or mainly of the sale of alcohol⁵;
 - 162 (3) any shop where the trade or business carried on consists wholly or mainly of the sale of any one or more of the following:
- 9
- 12. (a) motor supplies and accessories; or
 - 13. (b) cycle supplies and accessories⁶;
- 10
- 163 (4) any shop which:
- 11
- 14. (a) is a registered pharmacy⁷; and
 - 15. (b) is not open for the retail sale⁸ of any goods other than medicinal products⁹, veterinary medicinal products¹⁰ and surgical appliances¹¹;
- 12
- 164 (5) any shop at a designated airport¹² which is situated in an applicable part of the airport¹³;
 - 165 (6) any shop in a railway station¹⁴;
 - 166 (7) any shop at a service area¹⁵;
 - 167 (8) any petrol filling station¹⁶;
 - 168 (9) any shop which is not open for the retail sale of any goods other than food, stores or other necessaries required by any person for a vessel or aircraft on its arrival at, or immediately before its departure from, a port, harbour or airport¹⁷; and
 - 169 (10) any stand¹⁸ used for the retail sale of goods during the course of an exhibition¹⁹.

In determining whether a shop falls within head (1), (2) or (3) above, regard is to be had to the nature of the trade or business carried on there on weekdays as well as to the nature of the trade or business carried on there on Sunday²⁰.

1 As to the meaning of 'large shop' see PARA 908 note 3.

2 Ie the general prohibition in the Sunday Trading Act 1994 Sch 1 para 2(1): see PARA 908.

3 Sunday Trading Act 1994 s 1(1), Sch 1 paras 2(2)(a), 3(1).

4 Sunday Trading Act 1994 Sch 1 para 3(1)(a).

5 Sunday Trading Act 1994 Sch 1 para 3(1)(b) (amended by the Licensing Act 2003 s 198(1), Sch 6 para 110(1), (3)). As to the meaning of 'alcohol' see PARA 908 note 3.

6 Sunday Trading Act 1994 Sch 1 para 3(1)(c).

7 For these purposes, 'registered pharmacy' has the same meaning as in the Medicines Act 1968 (see MEDICINAL PRODUCTS AND DRUGS vol 30(2) (Reissue) PARA 51): Sunday Trading Act 1994 Sch 1 para 1.

8 For these purposes, 'retail sale' means any sale other than a sale for use or resale in the course of a trade or business; and references to retail purchases are to be construed accordingly: Sunday Trading Act 1994 Sch 1 para 1.

9 For these purposes, 'medicinal product' has the same meaning as in the Medicines Act 1968 (see **MEDICINAL PRODUCTS AND DRUGS** vol 30(2) (Reissue) PARA 7): Sunday Trading Act 1994 Sch 1 para 1.

10 For these purposes, 'veterinary medicinal product' has the same meaning as in the Veterinary Medicines Regulations 2006, SI 2006/2407, reg 2 (revoked; see now the Veterinary Medicines Regulations 2008, SI 2008/2297, reg 2) (see **MEDICINAL PRODUCTS AND DRUGS**): Sunday Trading Act 1994 Sch 1 para 1 (definition added by SI 2006/2407).

11 Sunday Trading Act 1994 Sch 1 para 3(1)(d) (amended by SI 2006/2407).

12 For these purposes, 'designated airport' means an airport designated by an order made by the Secretary of State, as being an airport at which there appears to him to be a substantial amount of international passenger traffic: Sunday Trading Act 1994 Sch 1 para 3(4). The power to make such an order is exercisable by statutory instrument: Sch 1 para 3(5). Any order made under the Shops (Airports) Act 1962 s 1(2) (repealed) and in force on 26 August 1994 (ie the commencement date of the Sunday Trading Act 1994 Sch 1: see PARA 914 note 1) has effect, so far as it relates to England and Wales, as if made also under the Sunday Trading Act 1994 Sch 1 para 3(4), and may be amended or revoked as it has effect for these purposes by an order under Sch 1 para 3(4): Sch 1 para 3(6). As to such orders see **AIR LAW** vol 2 (2008) PARA 320.

13 Sunday Trading Act 1994 Sch 1 para 3(1)(e). For these purposes, the applicable part is every part of a designated airport, except any part which is not ordinarily used by persons travelling by air to or from the airport: Sch 1 para 3(3).

14 Sunday Trading Act 1994 Sch 1 para 3(1)(f).

15 Sunday Trading Act 1994 Sch 1 para 3(1)(g). Ie a service area within the meaning of the Highways Act 1980: see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 742 note 13.

16 Sunday Trading Act 1994 Sch 1 para 3(1)(h).

17 Sunday Trading Act 1994 Sch 1 para 3(1)(j).

18 For these purposes, 'stand', in relation to an exhibition, means any platform, structure, space or other area provided for exhibition purposes: Sunday Trading Act 1994 Sch 1 para 1.

19 Sunday Trading Act 1994 Sch 1 para 3(1)(k). If a large shop is not exempt, it must comply with the requirements as to the maximum of six hours' opening on a Sunday: see PARA 911.

20 Sunday Trading Act 1994 Sch 1 para 3(2).

Halsbury's Laws of England/TRADE AND INDUSTRY (VOLUME 97 (2010) 5TH EDITION)/3.
SHOPS/(2) SUNDAY TRADING/(i) In general/911. Notice of opening hours.

911. Notice of opening hours.

At any time when a large shop¹ is open on Sunday² for the serving of retail customers³, there must be displayed in a conspicuous position inside and outside the shop a notice specifying the permitted Sunday opening hours⁴. If this requirement is contravened, the occupier of the shop is liable on summary conviction to a fine not exceeding level 2 on the standard scale⁵.

1 As to the meaning of 'large shop' see PARA 908 note 3.

2 Ie where the prohibition in the Sunday Trading Act 1994 Sch 1 para 2(1) is excluded only by Sch 1 para 2(3): see PARA 908 text and note 7. That exemption does not apply where the Sunday is Easter Day or Christmas Day: see Sch 1 para 2(4), (5) (amended and added respectively by the Christmas Day (Trading) Act 2004 s 4(1), (2)(a), (b)).

3 As to the meaning of 'retail customer' see PARA 908 note 4; and as to the meaning of 'retail sale' see PARA 910 note 8.

4 Sunday Trading Act 1994 s 1(1), Sch 1 para 6 (amended by SI 2004/470).

5 Sunday Trading Act 1994 Sch 1 para 7(2). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142. As to the enforcement of the Sunday Trading Act 1994, and as to the general provisions relating to offences thereunder, see PARAS 916-917.

Halsbury's Laws of England/TRADE AND INDUSTRY (VOLUME 97 (2010) 5TH EDITION)/3.
SHOPS/(2) SUNDAY TRADING/(i) In general/912. Shops occupied by persons observing the Jewish Sabbath.

912. Shops occupied by persons observing the Jewish Sabbath.

A person of the Jewish religion¹ who is the occupier² of a large shop³ may give to the local authority⁴ for the area in which the shop is situated a notice signed by him stating:

- 170 (1) that he is a person of the Jewish religion; and
- 171 (2) that he intends to keep the shop closed for the serving of customers on the Jewish Sabbath⁵.

Such a notice must be accompanied by a certificate signed by an authorised person⁶ that the person giving the notice is a person of the Jewish religion⁷. If there is any change in the occupation of the shop in respect of which such a notice has effect, or in any partnership or among the directors of any company by which such a shop is occupied, the notice is to be taken to be cancelled at the end of the period of 14 days beginning with the day on which the change occurred, unless, during that period, or within such further time as the local authority may allow, a fresh notice is given⁸ in respect of the shop⁹. A person who, in a notice or certificate given for the above purposes, makes a statement which is false in a material respect and which he knows to be false or does not believe to be true is liable on summary conviction to a fine not exceeding level 5 on the standard scale¹⁰.

Where such a notice is in force, the prohibition on the opening of a large shop on a Sunday does not apply¹¹.

Every local authority must keep a register containing particulars of the name, if any, and address of every shop in respect of which such a notice has effect¹²; and any register so kept must be open to inspection by members of the public at all reasonable times and may be kept by means of a computer¹³.

1 These provisions also apply to persons who are members of any religious body regularly observing the Jewish Sabbath as they apply to persons of the Jewish religion; and accordingly: (1) references to persons of the Jewish religion are to be construed as including any person who is a member of such a body; and (2) in the application of those provisions to such persons, 'authorised person' means a minister of the religious body concerned: Sunday Trading Act 1994 s 1(1), Sch 2 para 9.

2 For these purposes, a shop occupied by a partnership or company is to be taken to be occupied by a person of the Jewish religion if, and only if, the majority of the partners or directors are persons of that religion: Sunday Trading Act 1994 Sch 2 para 8(2). Where the occupier of a shop is a partnership or company: (1) any notice under Sch 2 para 8(1) must be given by the majority of the partners or directors and, if not given by all of them, must specify the names of all of the other partners or directors; and (2) a certificate under Sch 2 para 8(3) (see text and notes 6-7) is required in relation to each of the persons by whom such a notice is given: Sch 2 para 8(4). For these purposes, 'shop' has the same meaning as in Sch 1 (see PARA 908 note 3): Sch 2 para 8(12).

3 For these purposes, 'large shop' has the same meaning as in the Sunday Trading Act 1994 Sch 1 (see PARA 908 note 3): Sch 2 para 8(12).

4 As to the meaning of 'local authority' see PARA 908 note 2.

5 Sunday Trading Act 1994 Sch 2 paras 2(2)(b), 8(1).

6 For these purposes, 'authorised person', in relation to a notice under the Sunday Trading Act 1994 Sch 2 para 8(1), means: (1) the minister of the synagogue of which the person giving the notice is a member; (2) the secretary of that synagogue, within the meaning given in the Marriage Act 1949 Pt IV (ss 53-57) (see

REGISTRATION CONCERNING THE INDIVIDUAL vol 39(2) (Reissue) PARA 520 note 5); or (3) any other person nominated for these purposes by the President of the London Committee of Deputies of the British Jews (otherwise known as the Board of Deputies of British Jews): Sunday Trading Act 1994 Sch 2 para 8(12).

7 Sunday Trading Act 1994 Sch 2 para 8(3).

8 In under the Sunday Trading Act 1994 Sch 2 para 8(1).

9 Sunday Trading Act 1994 Sch 2 para 8(7). Where a fresh notice is given under Sch 2 para 8(1) by reason of a change of the kind mentioned in Sch 2 para 8(7), the local authority may dispense with the certificate required by Sch 2 para 8(3) in the case of any person in respect of whom such a certificate has been provided in connection with a former notice in respect of that shop or any other shop in the area of the local authority: Sch 2 para 8(8). A notice given under Sch 2 para 8(1) in respect of any shop must be cancelled on application in that behalf being made to the local authority by the occupier of the shop: Sch 2 para 8(9).

10 Sunday Trading Act 1994 Sch 2 para 8(10). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142. As to the enforcement of the Sunday Trading Act 1994, and as to the general provisions relating to offences thereunder, see PARAS 916-917. Where a person is convicted of such an offence, the local authority may cancel any notice under Sch 2 para 8(1) to which the offence relates: Sch 2 para 8(11).

11 See the Sunday Trading Act 1994 Sch 1 para 2(2)(b); and PARA 908.

12 Sunday Trading Act 1994 Sch 2 para 8(5).

13 Sunday Trading Act 1994 Sch 2 para 8(6).

Halsbury's Laws of England/TRADE AND INDUSTRY (VOLUME 97 (2010) 5TH EDITION)/3.
SHOPS/(2) SUNDAY TRADING/(i) In general/913. Control of loading and unloading at large shops on Sunday morning.

913. Control of loading and unloading at large shops on Sunday morning.

A local authority¹ may by resolution designate its area as a loading control area with effect from a date specified in the resolution, which must be a date at least one month after the date on which the resolution is passed².

Where a large shop³ which is permitted to be open on Sunday⁴ and which the occupier opens on Sunday for the serving of retail customers is situated in an area so designated, the occupier must not load or unload, or permit any other person to load or unload, goods from a vehicle at the shop before 9 am on Sunday in connection with the trade or business carried on in the shop, unless the loading or unloading is carried on:

- 172 (1) with the consent⁵ of the local authority for the area in which the shop is situated; and
- 173 (2) in accordance with any conditions⁶ subject to which that consent is granted⁷.

A person who contravenes the above provisions is liable on summary conviction to a fine not exceeding level 3 on the standard scale⁸.

1 As to the meaning of 'local authority' see PARA 908 note 2.

2 Sunday Trading Act 1994 s 2(1). A local authority may by resolution revoke any designation so made: s 2(2). Before making or revoking any such designation, it is the duty of a local authority to consult persons appearing to it to be likely to be affected by the proposed designation or revocation, whether as the occupiers of shops or as local residents, or persons appearing to the local authority to represent such persons: s 2(3). Where a local authority makes or revokes such a designation, it must publish notice of the designation or revocation in such manner as it considers appropriate: s 2(4).

3 As to the meaning of 'large shop' see PARA 908 note 3.

4 Ie by virtue of the Sunday Trading Act 1994 Sch 1 para 2(3): see PARA 908.

5 An application for such consent must be made in writing and must contain such information as the local authority may reasonably require: Sunday Trading Act 1994 s 2(5), Sch 3 para 4. An applicant for such a consent must pay such reasonable fee in respect of his application as the local authority may determine: Sch 3 para 5. Where an application is duly made to the local authority for such a consent, the authority must grant the consent unless it is satisfied that the loading or unloading of goods from vehicles before 9 am on Sunday at the shop to which the application relates, in connection with the trade or business carried on at the shop, has caused, or would be likely to cause, undue annoyance to local residents: Sch 3 para 6(1). The authority must determine the application and notify the applicant in writing of its decision within the period of 21 days beginning with the day on which the application is received by the authority (Sch 3 para 6(2)); and, in a case where a consent is granted, such notification must specify the conditions, if any, subject to which the consent is granted (Sch 3 para 6(3)). Where a local authority grants such a consent, it may cause a notice giving details of that consent to be published in a local newspaper circulating in its area: Sch 3 para 8. Where the local authority is satisfied that the loading or unloading authorised by virtue of such a consent has caused undue annoyance to local residents, it may revoke the consent: Sch 3 para 7(b).

6 Such a consent may be granted subject to such conditions as the local authority considers appropriate: Sunday Trading Act 1994 Sch 3 para 3(1). The local authority may at any time vary the conditions subject to which a consent is granted, and must give notice of the variation to the person to whom the consent was granted: Sch 3 para 3(2).

7 Sunday Trading Act 1994 Sch 3 paras 1, 2 (Sch 3 para 1 amended by SI 2004/470). The Sunday Trading Act 1994 Sch 3 para 2 does not apply where the Sunday is Christmas Day (loading and unloading at large shops

on Christmas Day being regulated by the Christmas Day (Trading) Act 2004 s 2: see PARA 909); Sunday Trading Act 1994 Sch 3 para 10 (added by the Christmas Day (Trading) Act 2004 s 4(1), (3)).

8 Sunday Trading Act 1994 Sch 3 para 9. As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142. As to the enforcement of the Sunday Trading Act 1994, and as to the general provisions relating to offences thereunder, see PARAS 916-917. Where the occupier of a shop in respect of which such a consent is granted is convicted of an offence under Sch 3 para 9 by reason of his failure to comply with the conditions subject to which the consent was granted, the local authority may revoke the consent: Sch 3 para 7(a).

Halsbury's Laws of England/TRADE AND INDUSTRY (VOLUME 97 (2010) 5TH EDITION)/3.
SHOPS/(2) SUNDAY TRADING/(i) In general/914. Leases entered into before 26 August 1994.

914. Leases entered into before 26 August 1994.

Where any lease or agreement, however worded, entered into before 26 August 1994¹ has the effect of requiring the occupier of a shop² to keep the shop open for the serving of retail customers³:

- 174 (1) during normal business hours; or
- 175 (2) during hours to be determined otherwise than by or with the consent of the occupier,

that lease or agreement is not to be regarded as requiring, or as enabling any other person to require, the occupier to open the shop on Sunday for the serving of retail customers⁴.

1 Ie the date on which the Sunday Trading Act 1994 s 3 came into force. Sections 1, 6-8, 9(1), (3), (4) came into force on 5 July 1994 (ie the date of Royal Assent). Schedules 1, 2 were brought into force on 26 August 1994: ss 1(1), 9(3); Sunday Trading Act 1994 Appointed Day Order 1994, SI 1994/1841, art 2. The remaining provisions of the Sunday Trading Act 1994 also came into force on 26 August 1994: Sunday Trading Act 1994 s 9(3); Sunday Trading Act 1994 Appointed Day Order 1994, SI 1994/1841, art 2.

2 For these purposes, 'shop' has the same meaning as in the Sunday Trading Act 1994 s 1(1), Sch 1 (see PARA 908 note 3): s 3(3).

3 For these purposes, 'retail customer' has the same meaning as in the Sunday Trading Act 1994 Sch 1 (see PARA 908 note 4): s 3(3).

4 Sunday Trading Act 1994 s 3(1). Section 3(1) does not affect any lease or agreement: (1) to the extent that it relates specifically to Sunday and would otherwise have the effect of requiring Sunday trading of a kind which before 26 August 1994 would have been lawful by virtue of any provision of the Shops Act 1950 Pt IV (ss 47-67) (repealed); or (2) to the extent that it is varied by agreement after 26 August 1994: Sunday Trading Act 1994 s 3(2).

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SHOPS/(2) SUNDAY TRADING/(ii) Rights of Shop Workers/915. In general.

(ii) Rights of Shop Workers

915. In general.

Special statutory protection is given¹ in relation to Sunday working for shop and betting workers.

Workers qualifying as protected shop workers and protected betting workers, that is to say workers already in employment on 25 August 1994 as shop workers or, as the case may be, on 2 January 1995 as betting workers, or whose contracts do not require Sunday working², are protected from being required to work on Sundays³. In addition, all shop or betting workers are given an option not to work on Sundays⁴.

Protected or opted-out shop or betting workers have a right not to be discriminated against for refusal to work on Sundays⁵; and the dismissal of such a worker for such a refusal is automatically unfair⁶, as is any later selection for redundancy on that ground⁷.

1 See by the Employment Rights Act 1996 Pt IV (ss 36-43): see **EMPLOYMENT** vol 39 (2009) PARA 298 et seq.

2 See **EMPLOYMENT** vol 39 (2009) PARA 298.

3 See **EMPLOYMENT** vol 39 (2009) PARA 299.

4 See **EMPLOYMENT** vol 39 (2009) PARA 300.

5 See the Employment Rights Act 1996 s 45; and **EMPLOYMENT** vol 39 (2009) PARA 545.

6 See the Employment Rights Act 1996 s 101; and **EMPLOYMENT** vol 40 (2009) PARA 743.

7 See the Employment Rights Act 1996 s 105(1), (4); and **EMPLOYMENT** vol 40 (2009) PARA 738. In addition, dismissal for asserting statutory rights by such a worker is automatically unfair: see s 104; and **EMPLOYMENT** vol 40 (2009) PARA 748.

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SHOPS/(2) SUNDAY TRADING/(iii) Enforcement/916. In general.

(iii) Enforcement

916. In general.

It is the duty of every local authority¹ to enforce within its area the provisions² of the Sunday Trading Act 1994³. For the purposes of such duties, it is the duty of every local authority to appoint inspectors⁴. An inspector appointed by a local authority has a right, on producing, if so required, some duly authenticated document showing his authority, at all reasonable hours:

- 176 (1) to enter any premises within the area of the local authority, with or without a constable, for the purpose of ascertaining whether there is or has been any contravention of certain provisions⁵ of the 1994 Act;
- 177 (2) to require the production of, inspect and take copies of any records, in whatever form they are held, relating to any business carried on on the premises which appear to him to be relevant for the purposes of head (1) above;
- 178 (3) where those records are kept by means of a computer, to require the records to be produced in a form in which they may be taken away; and
- 179 (4) to take such measurements and photographs as he considers necessary for the purposes of head (1) above⁶.

Any person who intentionally obstructs an inspector so appointed acting in the execution of his duty is liable on summary conviction to a fine not exceeding level 3 on the standard scale⁷.

The following general provisions apply to any offence under the 1994 Act⁸:

- 180 (a) where the commission by any person of an offence is due to the act or default of some other person, that other person is guilty of the offence, and a person may be charged with, and convicted of, the offence on that basis, whether or not proceedings are taken against the first-mentioned person⁹;
- 181 (b) where an offence committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, is guilty of the offence and is liable to be proceeded against and punished accordingly¹⁰;
- 182 (c) it is a defence for the person charged with an offence to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by himself or by a person under his control¹¹.

1 As to the meaning of 'local authority' see PARA 908 note 2.

2 Ie the provisions of the Sunday Trading Act 1994 ss 1(1), 2(5), Sch 1 (see PARAS 908-911), Sch 2 Pt II (paras 8-10) (see PARA 912) and Sch 3 (see PARA 913).

3 Sunday Trading Act 1994 Sch 2 para 1.

4 Sunday Trading Act 1994 Sch 2 para 2.

5 Ie the Sunday Trading Act 1994 Schs 1, 3.

6 Sunday Trading Act 1994 Sch 2 para 3.

7 Sunday Trading Act 1994 Sch 2 para 4. As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

8 The specific offences created by the Sunday Trading Act 1994 are considered in their particular contexts in PARA 908 et seq.

9 Sunday Trading Act 1994 Sch 2 para 5.

10 Sunday Trading Act 1994 Sch 2 para 6(1). Where the affairs of a body corporate are managed by its members, Sch 2 para 6(1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate: Sch 2 para 6(2).

11 Sunday Trading Act 1994 Sch 2 para 7(1). If in any case the defence provided by Sch 2 para 7(1) involves the allegation that the commission of the offence was due to the act or default of another person, the person charged is not, without leave of the court, entitled to rely on that defence unless, at least seven clear days before the hearing, he has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of that other person as was then in his possession: Sch 2 para 7(2).

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SHOPS/(2) SUNDAY TRADING/(iii) Enforcement/917. Other powers of enforcement.

917. Other powers of enforcement.

Although given specific powers to enforce the restrictions on Sunday opening¹, a local authority may also use its general power to bring civil proceedings in its own name² and apply for an injunction to restrain breaches of the legislation by a particular offender, especially where that offender is deliberately and flagrantly flouting the law and intends to carry on doing so³.

1 See PARA 908 et seq.

2 See the Local Government Act 1972 s 222(1); and **LOCAL GOVERNMENT** vol 69 (2009) PARA 573.

3 *Stoke-on-Trent City Council v B & Q (Retail) Ltd* [1984] AC 754, [1984] 2 All ER 332, HL. Although the cases cited here were decided under the Shops Act 1950 (repealed), the principles should apply equally to the Sunday Trading Act 1994. There is no need for the council to have exhausted its specific criminal powers first: *Runnymede Borough Council v Ball* [1986] 1 All ER 629, [1986] 1 WLR 353, CA (a planning case). Such an action is not defeated by the defendant's claim to have a defence to any criminal proceedings since that goes, not to jurisdiction, but to the discretion whether to grant the injunction; further, the court has a discretion to grant such an interlocutory injunction without requiring the council to give an undertaking in damages: *Kirklees Metropolitan Borough Council v Wickes Building Supplies Ltd* [1993] AC 227, [1992] 3 All ER 717, HL. This matter used to be of great significance under the Shops Act 1950 Pt IV (ss 47-67) (repealed) governing Sunday trading which was subject to widespread breach and was only backed specifically by criminal fines of level 4 on the standard scale, insufficient to deter breaches, given the profits to be made. There should now be less likelihood of such cases arising given that: (1) there is now a more liberal regime on Sunday opening; and (2) the maximum penalty for breach of the current regime is raised (see PARA 908). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

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PROMOTION OF TRADE AND ASSISTANCE TO INDUSTRY/(1) PROMOTION OF TRADE/(i) Export and Investment Guarantees/918. The provision of financial facilities and assistance.

4. PROMOTION OF TRADE AND ASSISTANCE TO INDUSTRY

(1) PROMOTION OF TRADE

(i) Export and Investment Guarantees

918. The provision of financial facilities and assistance.

The Secretary of State¹ may make arrangements² to provide financial facilities and assistance³ in connection with supplies by persons carrying on business⁴ in the United Kingdom⁵ of goods or services to persons carrying on business outside the United Kingdom⁶, and to make arrangements for the purpose of rendering economic assistance to countries outside the United Kingdom⁷. He may also make arrangements to facilitate the performance of, or to reduce or avoid losses arising under, obligations created or arising in connection with matters as to which he has exercised his powers⁸.

1 As to the Secretary of State see PARA 802. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 802 note 21.

2 Transactions entered into in pursuance of such arrangements, or arrangements of the kinds described in PARAS 919-920, may be on such terms as the Secretary of State considers appropriate: Export and Investment Guarantees Act 1991 s 4(1).

3 Such facilities and assistance may be provided in any form, including guarantees, insurance, grants or loans: Export and Investment Guarantees Act 1991 s 1(4). A guarantee includes an indemnity: s 4(3)(b).

4 'Business' includes a profession; a reference to persons 'carrying on business' in relation to things done outside the United Kingdom includes persons carrying on any other activities; and a reference to things done in or outside the United Kingdom is to things done wholly or partly in or, as the case may be, outside the United Kingdom: Export and Investment Guarantees Act 1991 s 4(3)(a), (c), (d). As to the meaning of 'carry on business' see COMPETITION vol 18 (2009) PARAS 370-372.

5 References to the United Kingdom include references to the Isle of Man and the Channel Islands: Export and Investment Guarantees Act 1991 s 4(4). As to the meaning of 'United Kingdom' generally see PARA 806 note 7.

6 Export and Investment Guarantees Act 1991 s 1(1) (substituted by the Industry and Exports (Financial Support) Act 2009 s 2(1)). Such arrangements may be made in connection with goods or services supplied before the arrangements are made or in connection with goods or services which are to be, or which may be, supplied: Export and Investment Guarantees Act 1991 s 1(1A) (added by the Industry and Exports (Financial Support) Act 2009 s 2(1)).

7 Export and Investment Guarantees Act 1991 s 1(2). All the functions of the Secretary of State under ss 1-7, except the power to make orders under ss 5-6, must be exercised and performed through the Export Credits Guarantee Department, which continues to be a department of the Secretary of State: s 13(1). The powers of the Secretary of State under ss 1-3 are exercisable only with the consent of the Treasury; such consent may be given in relation to particular cases or such description of cases as may be specified in the consent: s 4(2).

8 Export and Investment Guarantees Act 1991 s 1(3).

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PROMOTION OF TRADE AND ASSISTANCE TO INDUSTRY/(1) PROMOTION OF TRADE/(i) Export
and Investment Guarantees/919. Insurance in respect of overseas losses.

919. Insurance in respect of overseas losses.

The Secretary of State¹ may make arrangements² for insuring any person carrying on business in the United Kingdom³ against risks of losses resulting directly or indirectly from war, expropriation, restrictions on remittances and other similar events, in connection with: (1) any investment of resources by the insured in enterprises carried on outside the United Kingdom; or (2) guarantees given by the insured in respect of any investment of resources by others in such enterprises in which the insured has any interest⁴. Arrangements may also be made for insuring persons providing such insurance⁵.

1 As to the Secretary of State see PARA 802.

2 As to such arrangements see PARA 918 note 2.

3 As to references to persons carrying on business in the United Kingdom see PARA 918 note 4.

4 Export and Investment Guarantees Act 1991 s 2(1). References to a person carrying on business in the United Kingdom and to the insured include any company controlled directly or indirectly by him: s 2(3). See also INSURANCE vol 25 (2003 Reissue) PARA 792. As to the exercise of this power by the Secretary of State see PARA 918 note 7.

5 Export and Investment Guarantees Act 1991 s 2(2).

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 PROMOTION OF TRADE AND ASSISTANCE TO INDUSTRY/(1) PROMOTION OF TRADE/(i) Export and Investment Guarantees/920. Management of the Export Credits Guarantee Department portfolio.

920. Management of the Export Credits Guarantee Department portfolio.

The Secretary of State¹ may make any arrangements² which, in his opinion, are in the interests of the proper financial management of the Export Credits Guarantee Department portfolio (the 'ECGD portfolio')³. In pursuance of such arrangements, the Secretary of State may enter into any form of transaction, including: (1) lending; and (2) providing and taking out insurance and guarantees⁴. In pursuance of such an arrangement, however, he may not enter into a transaction for the purpose of borrowing money, although he is not precluded from entering into a transaction by reason of its involving borrowing⁵.

1 As to the Secretary of State see PARA 802.

2 Such arrangements may be made in anticipation of further rights being acquired or liabilities being incurred by the Secretary of State: Export and Investment Guarantees Act 1991 s 3(5). As to such arrangements see further PARA 918 note 2.

3 Export and Investment Guarantees Act 1991 s 3(1), which refers simply to 'the ECGD portfolio'. The 'ECGD portfolio' means the rights and liabilities to which the Secretary of State is entitled or subject by virtue of the exercise of his powers under the Export and Investment Guarantees Act 1991 or the old law or in consequence at arrangements made in the exercise of those powers: s 3(6). The 'old law' means the Export and Investment Guarantees Act 1978 (repealed) and any earlier enactment from which any provision of that Act was derived: Export and Investment Guarantees Act 1991 s 15(2).

4 Export and Investment Guarantees Act 1991 s 3(2). The Secretary of State may alter arrangements made under ss 1, 2, (see PARAS 918-919) or under the old law (see note 3) or make new or further arrangements: s 3(4). The Secretary of State may certify that any transaction he has entered into or is entering into has been or, as the case may be, is entered into in the exercise of the powers conferred by s 3 and such a certificate is conclusive evidence of the matters stated in it: s 3(7). As to the exercise of these powers by the Secretary of State see PARA 918 note 7. As to the meaning of 'guarantee' see PARA 918 note 3.

5 Export and Investment Guarantees Act 1991 s 3(3).

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PROMOTION OF TRADE AND ASSISTANCE TO INDUSTRY/(1) PROMOTION OF TRADE/(i) Export
and Investment Guarantees/921. Information relating to credit and investment insurance.

921. Information relating to credit and investment insurance.

The Secretary of State¹ may provide, and charge for: (1) information relating to credit or investment insurance; (2) services ancillary to the provision of such credit and insurance; and (3) such other goods and services as may be specified by order².

1 As to the Secretary of State see PARA 802.

2 Export and Investment Guarantees Act 1991 s 5(1). The power to make an order is exercisable only with the consent of the Treasury: s 5(2). The power to make an order is exercisable by statutory instrument, and no such order may be made unless a draft of it has been laid before and approved by resolution of the House of Commons: s 15(3). At the date at which this volume states the law, no such order had been made.

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PROMOTION OF TRADE AND ASSISTANCE TO INDUSTRY/(1) PROMOTION OF TRADE/(i) Export
and Investment Guarantees/922. Limits to Secretary of State's commitments.

922. Limits to Secretary of State's commitments.

The aggregate amount of the Secretary of State's¹ commitments² at any time under arrangements relating to exports and insurance³ must not exceed £35,000 million in the case of commitments in sterling, and 30,000 million special drawing rights⁴ in the case of foreign currency commitments⁵. The aggregate amount of commitments in connection with the management of the ECGD portfolio⁶ must not exceed £15,000 million in the case of commitments in sterling, and 10,000 million special drawing rights in the case of foreign currency commitments⁷. The Secretary of State may by order, with the consent of the Treasury, increase or further increase these limits⁸, but may not exercise this power in respect of any limit on more than three occasions⁹.

1 As to the Secretary of State see PARA 802.

2 The Secretary of State's commitments under any arrangements are his rights and liabilities relating to those arrangements: Export and Investment Guarantees Act 1991 s 6(5)(a). The amount of any commitments must be ascertained in accordance with the principles determined from time to time by the Secretary of State with the consent of the Treasury: s 6(5)(b).

3 Ie arrangements under the Export and Investment Guarantees Act 1991 ss 1, 2 other than arrangements for giving grants under s 1(3) (see PARA 918), and arrangements under the old law (as to which see PARA 920 note 3) other than arrangements for giving grants: s 6(2).

4 The figure was raised from 15,000 million to 25,000 million by the Export and Investment Guarantees (Limit on Foreign Currency Commitments) Order 1998, SI 1998/1675, and to 30,000 million by the Export and Investment Guarantees (Limit on Foreign Currency Commitments) Order 2000, SI 2000/2087. The accounts of the International Monetary Fund have been denominated in special drawing rights since 1972 following the enactment of the International Monetary Fund Act 1968 (repealed). The text of the amendments made to the Articles of Agreement of the Fund relating to special drawing rights is set out in Cmnd 3662.

5 Export and Investment Guarantees Act 1991 s 6(1)(a), (b). 'Foreign currency' means any currency other than sterling, including special drawing rights and any other units of account defined by reference to more than one currency: s 6(5)(c). Whether any commitments are in sterling or foreign currency is to be determined by reference to the currency in which the amount of the commitment is measured, rather than the currency of payment: s 6(5)(d). The equivalent in special drawing rights of the amount of any commitment in foreign currency must be ascertained at intervals determined from time to time by the Secretary of State with the consent of the Treasury, and in accordance with principles so determined: s 6(5)(e). A determination under s 6(5)(e) may provide for leaving out of account for the purposes of the limit in s 6(1)(b) or s 6(3)(b) (see text and note 7) any amount by which the limit would otherwise be exceeded to the extent that the amount is attributable to: (1) a revaluation under s 6(5)(e) of commitments; or (2) the fulfilment of an undertaking which, if fulfilled when it was given, would not have caused the limit to be exceeded: s 6(6).

6 Ie under the Export and Investment Guarantees Act 1991 s 3. See PARA 920.

7 Export and Investment Guarantees Act 1991 s 6(3)(a), (b).

8 Export and Investment Guarantees Act 1991 s 6(4), (7). The limits in s 6(1) (see text and notes 1-5) may be increased by a sum not exceeding £5,000 million or 5,000 million special drawing rights, and in s 6(3) (see text and notes 6-7) by a sum not exceeding £3,000 million or 2,000 million special drawing rights: s 6(4)(a), (b). No such order may be made unless a draft of it has been laid before and approved by resolution of the House of Commons: s 15(3).

9 Export and Investment Guarantees Act 1991 s 6(4).

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PROMOTION OF TRADE AND ASSISTANCE TO INDUSTRY/(1) PROMOTION OF TRADE/(i) Export
and Investment Guarantees/923. Annual report of the Secretary of State.

923. Annual report of the Secretary of State.

The Secretary of State¹ must prepare and lay before Parliament an annual report on the discharge of his functions under the provisions described in the immediately preceding paragraphs². A separate return must be prepared as soon as is practicable after 31 March each year showing the aggregate amounts of the commitments in sterling and in foreign currency on that date for the purposes of the relevant statutory limits³. That return must also be laid before Parliament⁴. Any such return must also give such further information as to the amounts of the commitments for the purposes of those limits as the Secretary of State may determine for that return⁵.

- 1 As to the Secretary of State see PARA 802.
- 2 Export and Investment Guarantees Act 1991 s 7(1), (5).
- 3 Export and Investment Guarantees Act 1991 s 7(2). The limits referred to are those in s 6(1), (3): see PARA 922.
- 4 Export and Investment Guarantees Act 1991 s 7(5).
- 5 Export and Investment Guarantees Act 1991 s 7(3).

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 PROMOTION OF TRADE AND ASSISTANCE TO INDUSTRY/(1) PROMOTION OF TRADE/(ii) Transfer or Delegation of Export Credits Guarantee Department Functions/924. Provision for transfer of the Export Credits Guarantee Department.

(ii) Transfer or Delegation of Export Credits Guarantee Department Functions

924. Provision for transfer of the Export Credits Guarantee Department.

The Secretary of State¹ may make a scheme or schemes for the transfer to any person or persons of such property, rights and liabilities as are specified in or determined in accordance with the scheme². Such a scheme may apply to property wherever situated and to property, rights and liabilities whether or not otherwise capable of being transferred or assigned by the Secretary of State or Her Majesty³. A scheme comes into force on a day specified in or determined under the scheme, and the property, rights and liabilities are transferred and vest on that day⁴.

No scheme may provide for the transfer of any rights or liabilities relating to a person's employment but specified regulations⁵ apply to the transfer of property, rights or liabilities by virtue of such a scheme⁶. Where, by operation of the regulations in relation to a transfer of property, rights or liabilities a person ceases to be employed in the civil service and becomes employed by a transferee, he will not be treated as having retired on redundancy for the purposes of a specified superannuation scheme⁷ and his ceasing to be employed in the civil service is not an occasion of redundancy for the purposes of the agreed redundancy procedures of the civil service⁸.

1 As to the Secretary of State see PARA 802.

2 Export and Investment Guarantees Act 1991 s 8(1). The property, rights and liabilities are those: (1) to which the Secretary of State, or, in the case of copyright, Her Majesty, is entitled or subject immediately before the day on which the scheme comes into force; and (2) which then subsisted for the purposes of or in connection with or are otherwise attributable to the exercise of functions under Pt I (ss 1-7) or the old law (as to which see PARA 920 note 3): s 8(1)(a), (b). Any property, rights or liabilities are to be taken to fall within s 8(1)(b) if the Secretary of State so certifies: s 8(2).

3 Export and Investment Guarantees Act 1991 s 8(3). The scheme may contain such supplementary, incidental, transitional or consequential provisions as appear to the Secretary of State to be appropriate: s 8(5).

4 Export and Investment Guarantees Act 1991 s 8(4). A certificate by the Secretary of State that anything specified has vested on any day in any person by virtue of a scheme is conclusive for all purposes: s 8(6), Schedule para 1.

Any agreement made, transaction effected or other thing (not contained in an enactment) which:

- 73 (1) has been made, effected or done by or in relation to the Secretary of State;
- 74 (2) relates to any property, rights or liability transferred under a scheme; and
- 75 (3) is in force or effective immediately before the day on which the scheme comes into force,

has effect on or after that day as if made, effected or done by the transferee: Schedule para 2(1), (2). References to the Secretary of State relating to or affecting any property, right or liability of the Secretary of State, contained in specified descriptions of documents, are taken on or after that day to refer to the transferee: Schedule para 2(3). 'Transferee' means any person to whom anything is transferred by virtue of a scheme under s 8: s 8(7).

5 le the Transfer of Undertakings (Protection of Employment) Regulations 2006, SI 2006/246: see **EMPLOYMENT** vol 39 (2009) PARA 111 et seq; and **EMPLOYMENT** 41 (2009) PARAS 1140, 1162 et seq.

6 Export and Investment Guarantees Act 1991 s 9(1) (amended by SI 2006/246). The regulations apply whether or not the transfer would, apart from the Export and Investment Guarantees Act 1991 s 9(1), be a relevant transfer for the purposes of those regulations: s 9(1).

7 le any scheme under the Superannuation Act 1972 s 1: see **SOCIAL SECURITY AND PENSIONS** vol 44(2) (Reissue) PARA 875.

8 Export and Investment Guarantees Act 1991 s 9(2).

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PROMOTION OF TRADE AND ASSISTANCE TO INDUSTRY/(1) PROMOTION OF TRADE/(ii) Transfer or Delegation of Export Credits Guarantee Department Functions/925. Vehicle companies.

925. Vehicle companies.

The Secretary of State¹ may, with the consent of the Treasury²:

- 183 (1) subscribe for or otherwise acquire shares in or securities of a vehicle company³ or acquire rights so to subscribe⁴;
- 184 (2) by direction to a company formed or acquired for the purpose of becoming a transferee, require it, in consequence of the transfer by a scheme of property, rights or liabilities⁵, to issue to him or to some other specified person such shares or securities as may be specified⁶;
- 185 (3) from time to time by direction to a vehicle company require it to issue to him or some other specified person such shares or securities as may be specified⁷; or
- 186 (4) make loans to a vehicle company on such terms and conditions as he may determine⁸.

He may not subscribe for or otherwise acquire shares in or securities of a vehicle company, or acquire rights so to subscribe, unless all relevant shares⁹ are to be held by or on behalf of the Crown¹⁰, or at any time give a direction or make a loan to a vehicle company unless all relevant shares are then held by or on behalf of the Crown¹¹. A scheme of transfer of property, rights and liabilities may, as between any vehicle companies or between a vehicle company and the Secretary of State, confer or impose rights and liabilities in connection with any of the matters as to which the Secretary of State may exercise his statutory powers¹².

1 As to the Secretary of State see PARA 802.

2 Export and Investment Guarantees Act 1991 s 10(7).

3 'Vehicle company' means a company formed or acquired for the purpose of becoming a transferor or holding shares in a company formed or acquired for that purpose: Export and Investment Guarantees Act 1991 s 10(1). As to the meaning of 'transferee' see PARA 924 note 4.

4 Export and Investment Guarantees Act 1991 s 10(2)(a). The Secretary of State may not dispose of any such shares or securities without the consent of the Treasury: s 10(7).

5 Ie under a scheme made under the Export and Investment Guarantees Act 1991 s 8: see PARA 924.

6 Export and Investment Guarantees Act 1991 s 10(2)(b). A direction under s 10(2)(b) or s 10(2)(c) may require any shares to which it relates to be issued as fully or partly paid up: s 10(3).

7 Export and Investment Guarantees Act 1991 s 10(2)(c); and see note 6.

8 Export and Investment Guarantees Act 1991 s 10(2)(d).

9 'Relevant shares' means the issued shares of a vehicle company or, if it is a subsidiary of another vehicle company, the issued shares of that other company: Export and Investment Guarantees Act 1991 s 10(5)(b).

10 Shares are held by or on behalf of the Crown where the Crown or any person acting on its behalf has a legal interest in them: Export and Investment Guarantees Act 1991 s 10(5)(a).

11 Export and Investment Guarantees Act 1991 s 10(4).

12 Export and Investment Guarantees Act 1991 s 10(6).

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PROMOTION OF TRADE AND ASSISTANCE TO INDUSTRY/(1) PROMOTION OF TRADE/(ii) Transfer or Delegation of Export Credits Guarantee Department Functions/926. Insurance of Secretary of State against losses.

926. Insurance of Secretary of State against losses.

The Secretary of State¹ may make arrangements with any transferee² under which the transferee insures the Secretary of State against risks of losses arising in consequence of arrangements made, before the date on which any scheme of transfer comes into force³, under specified statutory provisions⁴ or the old law⁵.

1 As to the Secretary of State see PARA 802.

2 As to the meaning of 'transferee' see PARA 924 note 4.

3 Ie a scheme under the Export and Investment Guarantees Act 1991 s 8: see PARA 924.

4 Ie the Export and Investment Guarantees Act 1991 Pt I (ss 1-7).

5 Export and Investment Guarantees Act 1991 s 11(1). As to the meaning of 'old law' see PARA 920 note 3. The Secretary of State must from time to time determine, in relation to such classes of risk determined by him as might be insured by him, whether it is expedient in the national interest for him to exercise his powers under s 1 to make arrangements for reinsuring persons providing insurance for risks of that class: s 11(2). In exercising his duty under s 11(2) the Secretary of State must consult the Export Guarantees Advisory Council: s 13(4). The council referred to is established under s 13(2); its function is to give to the Secretary of State, at his request, advice in respect of any matter relating to the exercise of his functions under the Act: s 13(3). Section 11 is without prejudice to any power of the Secretary of State under Pt I: s 11(3).

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PROMOTION OF TRADE AND ASSISTANCE TO INDUSTRY/(1) PROMOTION OF TRADE/(ii) Transfer or Delegation of Export Credits Guarantee Department Functions/927. Functions of the Secretary of State.

927. Functions of the Secretary of State.

All the functions of the Secretary of State¹ under Part I of the Export and Investment Guarantees Act 1991² are exercised and performed through the Export Credits Guarantee Department, which is a department of the Secretary of State³.

The Secretary of State may, however, make arrangements for certain functions⁴ to be exercised on his behalf by any transferee⁵ or any other person, instead of through the Export Credits Guarantees Department, on such terms and conditions as he may determine⁶.

Any sums required by the Secretary of State for making payments or for defraying his administrative expenses under the Act are paid out of money provided by Parliament⁷, and any sums received by him by virtue of the Act must be paid into the Consolidated Fund⁸.

1 As to the Secretary of State see PARA 802.

2 Ie the Export and Investment Guarantees Act 1991 ss 1-7. However, this does not apply to the power to make orders under s 5 or s 6 (see PARAS 921, 922 text and notes 8-9): s 13(1).

3 Export and Investment Guarantees Act 1991 s 13(1).

4 Ie the functions to which the Export and Investment Guarantees Act 1991 s 12 applies, namely the Secretary of State's power to make arrangements under s 1 (see PARA 918) and any of his functions under such arrangements, or arrangements under the old law, including, so far as they relate to any such arrangements, arrangements made by virtue of s 3(4): s 12(2). As to the meaning of 'old law' see PARA 920 note 3.

5 As to the meaning of 'transferee' see PARA 924 note 4.

6 Export and Investment Guarantees Act 1991 s 12(1); s 12 does not affect any requirement for the consent of the Treasury: s 12(3).

7 If any sum required by the Secretary of State for fulfilling his liabilities is not so provided, it must be charged on and paid out of the Consolidated Fund: Export and Investment Guarantees Act 1991 s 14(2). As to the Consolidated Fund see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 711 et seq; and **PARLIAMENT** vol 78 (2010) PARA 1028 et seq.

8 Export and Investment Guarantees Act 1991 s 14(1).

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(iii) Development of Tourism

928. The British Tourist Authority and other tourist bodies.

For the purpose of promoting the development of tourism to and within Great Britain¹, four tourist boards² were established by the Development of Tourism Act 1969³. These bodies have subsequently been reduced to three⁴: the British Tourist Authority (VisitBritain)⁵; the English Tourist Board (VisitEngland)⁶; and VisitScotland⁷. Each tourist board is a body corporate having perpetual succession and a common seal⁸. The Greater London Authority is under a duty to promote tourism in Greater London⁹.

1 As to the meaning of 'Great Britain' see PARA 806 note 7.

2 'Tourist board' means any body established by the Development of Tourism Act 1969 s 1, namely the three bodies mentioned in the text: s 1(6).

3 See the Development of Tourism Act 1969 s 1(1) (as originally enacted). The four bodies thereby established were the British Tourist Authority, the English Tourist Board, the Scottish Tourist Board and the Wales Tourist Board.

4 See the Development of Tourism Act 1969 s 1(1) (amended by the Tourist Boards (Scotland) Act 2006 s 1(2); and by SI 2005/3225). The functions of the Wales Tourist Board were transferred to the National Assembly for Wales and subsequently to the Welsh Ministers: see the Wales Tourist Board (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3225; and the Government of Wales Act 2006 s 162, Sch 11 para 30. The Welsh Assembly Government's tourism team, within the Department for Heritage, is Visit Wales.

5 Development of Tourism Act 1969 s 1(1). The British Tourist Authority consists of a chairman and not more than five other members appointed by the Secretary of State, together with the chairmen of the other two tourist boards and a person appointed by the Welsh Ministers: s 1(2) (amended by the Tourist Boards (Scotland) Act 2006 s 1(2); and by SI 2005/3225; and by virtue of the Government of Wales Act 2006 s 162, Sch 11 para 32). The Secretary of State here concerned is the Secretary of State for Culture, Media and Sport. As to the Secretary of State generally see PARA 802 but note that the powers of the Secretary of State for Trade and Industry under this Act were transferred to the Secretary of State for Employment (Transfer of Functions (Tourism and Small Businesses) Order 1985, SI 1985/1778) and then to the Secretary of State for National Heritage (Transfer of Functions (National Heritage) Order 1992, SI 1992/1311). The Department of National Heritage was renamed the Department for Culture, Media and Sport by the Secretary of State for Culture, Media and Sport Order 1997, SI 1997/1744; and the Secretary of State is now styled accordingly.

As to the appointment and resignation of members of tourist boards and the declaration of offices to be vacant see the Development of Tourism Act 1969 s 1(5), Sch 1 paras 3-5, 18. As to their remuneration and pensions see Sch 1 paras 6-9, 17 (amended by virtue of SI 1981/1670). Members receiving remuneration are disqualified for membership of the House of Commons: see the House of Commons Disqualification Act 1975 s 1(1)(f), Sch 1 Pt III (amended by SI 2005/3225; and SI 2007/1103); and PARLIAMENT vol 78 (2010) PARA 908.

6 Development of Tourism Act 1969 s 1(1). The English Tourist Board consists of a chairman and not more than six other members appointed by the Secretary of State: s 1(3) (amended by SI 2005/3225). As to the Secretary of State see note 5.

7 Development of Tourism Act 1969 s 1(1) (amended by the Tourist Boards (Scotland) Act 2006 s 1(2)). VisitScotland consists of a chairman and not more than 11 other members appointed by the Secretary of State for Scotland: s 1(3) (amended by the Tourist Boards (Scotland) Act 2006 ss 1(2), 2).

8 Development of Tourism Act 1969 Sch 1 paras 1, 15, 16. As to the proceedings of a board see Sch 1 paras 12-14. As to staff see Sch 1 paras 10, 11. A board is not regarded as the servant or agent of the Crown, and is not exempt from taxes etc: see Sch 1 para 2.

9 Greater London Authority Act 1999 s 378 (amended by the Tourist Boards (Scotland) Act 2006 s 4, Sch 2 Pt 1 para 5; and by SI 2005/3225). The Authority has a duty to advise certain bodies on matters relating to tourism: Greater London Authority Act 1999 s 379. The Authority's functions under these provisions may be delegated: s 380 (amended by the Greater London Authority Act 2007 s 51(2); and by SI 2001/2237). Grants may be paid by the Secretary of State to the Authority for its tourism functions: Greater London Authority Act 1999 s 381. Definitions for these provisions are contained in s 382. See generally **LONDON GOVERNMENT**.

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Development of Tourism/929. Functions of tourist boards.

929. Functions of tourist boards.

The function of the British Tourist Authority¹ is to encourage people to visit Great Britain², to encourage people living in Great Britain to take their holidays there, and to encourage the provision and improvement of tourist amenities and facilities³ in Great Britain⁴. The other tourist boards⁵ and the Welsh Ministers have the same functions as respects their respective countries⁶.

Each tourist board has and the Welsh Ministers have power to do anything for the purpose of discharging these functions or anything which is incidental or conducive to their discharge⁷ and in particular (but without prejudice to the generality of the above provisions) power:

- 187 (1) to promote or undertake publicity in any form⁸;
- 188 (2) to provide advisory and information services⁹;
- 189 (3) to promote or undertake research¹⁰;
- 190 (4) to establish committees to advise them in the performance of their functions¹¹; and
- 191 (5) to contribute to or reimburse expenditure incurred by any other person or organisation carrying on the activities listed in heads (1) to (3) above¹².

None of the tourist boards except the British Tourist Authority has power, otherwise than with the agreement of that authority, to carry on any activities outside the United Kingdom¹³ for the purpose of encouraging people to visit Great Britain or any part of it¹⁴. Except as otherwise provided¹⁵, none of the tourist boards has power to give financial assistance for the carrying out of, or itself to carry out, any project for providing or improving tourist amenities or facilities in Great Britain¹⁶. Likewise, except as otherwise provided¹⁷, the Welsh Ministers have no such power under the Development of Tourism Act 1969¹⁸. Notwithstanding this provision, the Welsh Ministers may carry on activities outside the United Kingdom for the purpose of encouraging people to visit Wales¹⁹.

In discharging their functions, the English Tourist Board, VisitScotland and the Welsh Ministers must have regard to the desirability of fostering and, in appropriate cases, co-operating with organisations discharging functions corresponding to those of those bodies or the Welsh Ministers in relation to particular areas within the countries for which those bodies or the Welsh Ministers are respectively responsible²⁰. Each tourist board and the Welsh Ministers must also have regard to the desirability of undertaking appropriate consultation with the other tourist boards and, as appropriate, with the Welsh Ministers, and with persons and organisations who have knowledge of, or are interested in, any matters affecting the discharge of their functions²¹.

1 As to the British Tourist Authority see PARA 928.

2 As to the meaning of 'Great Britain' see PARA 806 note 7.

3 'Tourist amenities and facilities' means, in relation to any country, amenities and facilities for visitors to that country and for other people travelling within it on business or pleasure: Development of Tourism Act 1969 s 2(9).

4 Development of Tourism Act 1969 s 2(1).

5 As to the meaning of 'tourist board' see PARA 928 note 2.

6 Development of Tourism Act 1969 s 2(1) (amended by the Tourist Boards (Scotland) Act 2006 s 1(2); and by SI 2005/3225; and by virtue of the Government of Wales Act 2006 s 162, Sch 11 para 32).

7 Development of Tourism Act 1969 s 2(2) (amended by SI 2005/3225; and by virtue of the Government of Wales Act 2006 Sch 11 para 32).

8 Development of Tourism Act 1969 s 2(2)(a).

9 Development of Tourism Act 1969 s 2(2)(b).

10 Development of Tourism Act 1969 s 2(2)(c).

11 Development of Tourism Act 1969 s 2(2)(d).

12 Development of Tourism Act 1969 s 2(2)(e) (amended by SI 2005/3225; and by virtue of the Government of Wales Act 2006 Sch 11 para 32). A tourist board may charge for its services and receive contributions towards its expenses in carrying out any of its functions (s 2(7)), but it may not borrow money except with the consent of the relevant minister and the Treasury (s 2(8)). The Welsh Ministers may charge for their services and receive contributions towards their expenses in carrying out any of their functions under the 1969 Act as read with the Tourism (Overseas Promotion) (Wales) Act 1992 (see text and note 19) (Development of Tourism Act 1969 s 2(7A) (added by SI 2005/3225; and amended by virtue of the Government of Wales Act 2006 Sch 11 para 32)), and may borrow money for the purposes of exercising their functions under the 1969 Act as read with the Tourism (Overseas Promotion) (Wales) Act 1992 (Development of Tourism Act 1969 s 2(8A) (added by SI 2005/3225; and amended by virtue of the Government of Wales Act 2006 Sch 11 para 32)).

'Relevant minister' means, in relation to the British Tourist Authority and the English Tourist Board, the Secretary of State, and, in relation to VisitScotland, the Secretary of State for Scotland (see the Development of Tourism Act 1969 s 1(6) (amended by the Tourist Boards (Scotland) Act 2006 s 1(2); and by SI 2005/3225); and PARA 928 note 5). After consultation with a tourist board, the relevant minister may give to it directions of a general character as to the exercise of its functions: Development of Tourism Act 1969 s 19(1).

13 As to the meaning of 'United Kingdom' see PARA 806 note 7.

14 Development of Tourism Act 1969 s 2(3). However, this does not prevent a tourist board or the Welsh Ministers from carrying out such activities on behalf of the British Tourist Authority: s 2(3) (amended by SI 2005/3225; and by virtue of the Government of Wales Act 2006 Sch 11 para 32).

15 Ie by the Development of Tourism Act 1969 ss 3, 4: see PARA 930.

16 Development of Tourism Act 1969 s 2(4).

17 Ie by the Development of Tourism Act 1969 ss 3, 4A: see PARA 930.

18 Development of Tourism Act 1969 s 2(4A) (added by SI 2005/3225; and amended by virtue of the Government of Wales Act 2006 Sch 11 para 32).

19 Tourism (Overseas Promotion) (Wales) Act 1992 s 1(1) (amended by SI 2005/3225; and by virtue of the Government of Wales Act 2006 Sch 11 para 32). This does not affect the British Tourist Authority's power to carry on activities outside the United Kingdom for the purpose of encouraging people to visit Wales, nor does it prevent the Welsh Ministers from acting on behalf of the Authority as mentioned in the Development of Tourism Act 1969 s 2(3) (see note 14): Tourism (Overseas Promotion) (Wales) Act 1992 s 1(3) (amended by SI 2005/3225; and by virtue of the Government of Wales Act 2006 Sch 11 para 32). The Tourism (Overseas Promotion) (Scotland) Act 1984 (amended by the Tourist Boards (Scotland) Act 2006 s 4 Sch 2 Pt 1 para 4) makes parallel provision for VisitScotland.

20 Development of Tourism Act 1969 s 2(5) (amended by the Tourist Boards (Scotland) Act 2006 ss 1(2), 4, Sch 2 Pt 1 para 1(a); by SI 2005/3225; and by virtue of the Government of Wales Act 2006 Sch 11 para 32). Without prejudice to the Development of Tourism Act 1969 s 2(1)-(4A), each of the bodies mentioned, and the Welsh Ministers, has power to provide such organisations with financial and other assistance: s 2(5) (as so amended).

21 Development of Tourism Act 1969 s 2(6) (amended by SI 2005/3225; and by virtue of the Government of Wales Act 2006 Sch 11 para 32).

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Development of Tourism/930. Tourist projects.

930. Tourist projects.

After consultation with the other tourist boards¹ and the Welsh Ministers, the British Tourist Authority² may prepare schemes providing for the giving of financial assistance by those boards and the Welsh Ministers for specified classes of projects which in the authority's opinion will provide or improve tourist amenities and facilities³ in Great Britain⁴. Subject to the provisions of any scheme and to certain directions⁵, a tourist board and the Welsh Ministers, in making a grant or loan, may impose such terms and conditions as they think fit, including conditions for the repayment of a grant in specified circumstances⁶. Such a scheme must be submitted to the Secretary of State, who may by order confirm it with or without modification⁷.

In accordance with arrangements approved by the relevant minister and the Treasury, a tourist board may give financial assistance for the carrying out of any project which in the board's opinion will provide or improve tourist amenities and facilities in the country for which it is responsible⁸, and with the approval of the minister and the Treasury may carry out any such project⁹.

The Welsh Ministers have power to give financial assistance for the carrying out of any project which in their opinion will provide or improve tourist amenities and facilities in Wales and to carry out any such project¹⁰.

1 As to the meaning of 'tourist board' see PARA 928 note 2.

2 As to the British Tourist Authority see PARA 928.

3 As to the meaning of 'tourist amenities and facilities' see PARA 929 note 3.

4 Development of Tourism Act 1969 s 3(1) (amended by the Tourist Boards (Scotland) Act 2006 s 1(2); and by SI 2005/3225; and by virtue of the Government of Wales Act 2006 s 162, Sch 11 para 32). As to the meaning of 'Great Britain' see PARA 806 note 7. A scheme under the Development of Tourism Act 1969 s 3 may provide for financial assistance to be given by way of grant or loan or by any combination of those methods: s 3(3). Such a scheme may be varied or revoked by a subsequent scheme prepared, submitted and confirmed in like manner or, subject to s 3(6) (see note 7), by an order made by the Secretary of State after consultation with the Authority, the other tourist boards and the Welsh Ministers: s 3(5) (amended by the Tourist Boards (Scotland) Act 2006 s 1(2); and by SI 2005/3225; and by virtue of the Government of Wales Act 2006 Sch 11 para 32). As to the Secretary of State see PARA 928 note 5.

5 Ie directions under the Development of Tourism Act 1969 s 19: see note 6.

6 Development of Tourism Act 1969 s 3(4) (amended by SI 2005/3225; and by virtue of the Government of Wales Act 2006 Sch 11 para 32). As to the means of securing compliance with conditions see the Development of Tourism Act 1969 Sch 2 (amended by the Criminal Law Act 1977 s 65, Sch 13; the Criminal Justice Act 1982 ss 38, 46; and SI 2005/3225; and by virtue of the Government of Wales Act 2006 Sch 11 para 32). A tourist board may by notice require any person who has received such a grant, and any person acting on his behalf, to furnish to the board specified information, or to produce for examination specified books, records or other documents, for the purpose of enabling it to determine whether any condition for making the grant is satisfied or is being complied with, or whether the grant has become repayable in whole or in part in accordance with any such condition: Development of Tourism Act 1969 Sch 2 para 1(1). This applies in relation to the Welsh Ministers and any person who has received a grant from those ministers (and any person acting on that person's behalf) as it applies in relation to a tourist board and the corresponding persons: Sch 2 para 1(1A) (added by SI 2005/3225; and amended by virtue of the Government of Wales Act 2006 Sch 11 para 32). As to the service of such a notice see the Development of Tourism Act 1969 Sch 2 para 1(2), (3). Failure to comply with a notice is an offence punishable on summary conviction with a fine not exceeding level 5 on the standard scale: Sch 2 para 1(4) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

Subject to the provisions of the Development of Tourism Act 1969 s 3, the relevant minister (defined in PARA 929 note 12) may, with the approval of the Treasury, give to a tourist board directions as to: (1) the matters with respect to which that board must be satisfied before making a loan under the scheme; (2) the terms on which and the conditions subject to which any such loan is to be made; (3) the conditions to be imposed in making any grant under the scheme: s 19(2)(a)-(c) (amended by the Statute Law (Repeals) Act 1998 s 1(1), Sch 1 Pt IV). Such directions may distinguish between different classes of case: Development of Tourism Act 1969 s 19(2). Without prejudice to the provisions of head (1), directions under that head may require a tourist board to be satisfied that the applicant cannot obtain a loan for the purpose in question from any other source, whether on terms which are more or less favourable than those of any loan which might be made by the board: Development of Tourism Act 1969 s 19(3). A tourist board must give effect to any directions given to it under s 19: s 19(4).

7 Development of Tourism Act 1969 s 3(2). If a scheme is so confirmed it then has effect: s 3(2). Any power of the Secretary of State to make orders under s 3 is exercisable by statutory instrument, and any order under s 3(2) must set out the scheme which the order confirms: s 3(6). No order may be made under s 3 except with the consent of the Treasury and unless a draft of the order has been laid before Parliament and approved by a resolution of each House: s 3(6). At the date at which this volume states the law, no such order had been made.

8 Development of Tourism Act 1969 s 4(1)(a). Such financial assistance may be given by way of grant or loan or, if the project is being or is to be carried out by a company incorporated in Great Britain, by subscribing for or otherwise acquiring shares or stock in the company, or by any combination of those methods: s 4(2). In making such a grant or loan a tourist board may, subject to the arrangements, impose such terms and conditions as it thinks fit, including conditions for the repayment of a grant in specified circumstances, and Sch 2 has effect for securing compliance with such conditions: s 4(3). A tourist board must not dispose of any shares or stock so acquired by it by virtue of s 4 except: (1) after consultation with the company in which the shares or stock are held, and; (2) with the approval of the relevant minister and (except for the Wales Tourist Board) the Treasury: s 4(4).

9 Development of Tourism Act 1969 s 4(1)(b).

10 Development of Tourism Act 1969 s 4A(1) (s 4A added by SI 2005/3225; and amended by virtue of the Government of Wales Act 2006 Sch 11 para 32). Such financial assistance may be given by way of grant or loan or, if the project is being or is to be carried out by a company incorporated in Great Britain, by subscribing for or otherwise acquiring shares or stock in the company or by any combination of those methods: Development of Tourism Act 1969 s 4A(2) (as so added). In making a grant or loan under these provisions the Welsh Ministers may impose such terms and conditions as they think fit, including conditions for the repayment of a grant in specified circumstances; and Sch 2 has effect for securing compliance with conditions subject to which any such grant is made: s 4A(3) (as so added and amended). The Welsh Ministers must not dispose of any shares or stock acquired by them by virtue of s 4A except after consultation with the company in which the shares or stock are held: s 4A(4) (as so added and amended).

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931. Other duties and powers.

It is the duty of a tourist board¹ and the Welsh Ministers to advise any minister or public body² on such matters relating to tourism in Great Britain³ (in the case of the British Tourist Authority), or the part of Great Britain with which the board or the Welsh Ministers is or are concerned (in the case of the other boards and the Welsh Ministers), as the minister or body may refer to it or as the board or the Welsh Ministers may think fit⁴.

At the request of any corresponding body established under the law of Northern Ireland, any of the Channel Islands or the Isle of Man⁵ and on such terms as may be agreed upon between the British Tourist Authority and that body, the authority has power to carry on activities outside the United Kingdom⁶ and those islands for encouraging people to visit Northern Ireland or those islands⁷.

The British Tourist Authority and the Welsh Ministers have power to enter into agreements for the purpose of: (1) furthering sustainable development in one or more countries⁸ outside the United Kingdom; (2) improving the welfare of the population⁹ of one or more such countries; or (3) alleviating the effects of a natural or man-made disaster or other emergency on the population of one or more such countries¹⁰.

1 As to the meaning of 'tourist board' see PARA 928 note 2.

2 'Public body' includes any local authority or statutory undertaker, and any trustees, commissioners, board or other persons who, as a public body and not for their own profit, act under any enactment for the improvement of any place or the production or supply of any commodity or service: Development of Tourism Act 1969 s 5(2).

3 As to the meaning of 'Great Britain' see PARA 806 note 7.

4 Development of Tourism Act 1969 s 5(1) (amended by the Tourist Boards (Scotland) Act 2006 s 1(2); and by SI 2005/3225; and by virtue of the Government of Wales Act 2006 s 162, Sch 11 para 32).

5 As to the Channel Islands and the Isle of Man see COMMONWEALTH vol 13 (2009) PARAS 790-800.

6 As to the meaning of 'United Kingdom' see PARA 806 note 7.

7 Development of Tourism Act 1969 s 5(3).

8 'Country' includes any territory or region: International Development Act 2002 s 17(1).

9 References to the population of a country include references to any future population of the country and to any part of the population, present or future: International Development Act 2002 s 17(2).

10 International Development Act 2002 s 9(1), Sch 1 (Sch 1 amended by SI 2005/3225; and by virtue of the Government of Wales Act 2006 Sch 11 para 32). See also HEALTH SERVICES vol 54 (2008) PARA 86. Such an agreement must not make provision for the Authority or ministers to provide financial assistance (see the International Development Act 2002 ss 6, 7): s 9(2). Before entering into such an agreement, the British Tourist Authority must obtain the consent of the Secretary of State: see ss 9(3), (4), 10 (s 9(4) amended by SI 2005/3225; and by virtue of the Government of Wales Act 2006 Sch 11 para 32). The Secretary of State concerned is the Secretary of State for International Development: see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 459 et seq.

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Development of Tourism/932. Accounts and information.

932. Accounts and information.

Each tourist board¹ must keep proper accounts and other records in relation to the accounts and must prepare in respect of each of its financial years² a statement of account in such form as the relevant minister³ may with the approval of the Treasury determine⁴. The statement must be submitted to him at such time as he may with such approval direct⁵. Each tourist board must provide him with such information relating to its activities or proposed activities as he from time to time requires⁶. As soon as possible after the end of each financial year, each tourist board must make to the relevant minister a report dealing with its activities during that year, and he must lay a copy of the report before each House of Parliament⁷.

1 As to the meaning of 'tourist board' see PARA 928 note 2.

2 'Financial year' means a 12 month period ending with 31 March in each year: Development of Tourism Act 1969 s 6(7).

3 As to the meaning of 'relevant minister' see PARA 929 note 12.

4 Development of Tourism Act 1969 s 6(1).

5 Development of Tourism Act 1969 s 6(2). Except in the case of VisitScotland, the relevant minister must, on or before 30 November in any year, transmit to the Comptroller and Auditor General the statement of account prepared by each tourist board for the last financial year: s 6(3), (8) (s 6(8) added by SSI 2002/176; and amended by the Tourist Boards (Scotland) Act 2006 s 1(2)). The Comptroller and Auditor General must examine and certify each such statement and lay copies before Parliament together with his report: Development of Tourism Act 1969 s 6(4).

6 Development of Tourism Act 1969 s 6(5). For this purpose the board must permit any person authorised in that behalf by the minister to inspect and make copies of its accounts, books, documents or papers and must afford to that person such explanation of each as he may reasonably require: s 6(5).

7 Development of Tourism Act 1969 s 6(6).

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Development of Tourism/933. Registration of hotels etc and notification of prices.

933. Registration of hotels etc and notification of prices.

Provision may be made by Order in Council¹ for the registration² by tourist boards³ and the Welsh Ministers of hotels and other establishments in Great Britain⁴ at which sleeping accommodation is provided by way of trade or business⁵. An order may make provision⁶ in particular:

- 192 (1) as to the form and contents of the register or registers to be maintained and the establishments to be registered⁷;
- 193 (2) for requiring the person carrying on an establishment which is required to be registered to furnish specified information, at specified times, to the body responsible for registering it⁸;
- 194 (3) for the charging of annual or other periodical fees for registration⁹;
- 195 (4) for the issue and display of certificates of registration and the display of signs indicating that the establishment is registered¹⁰;
- 196 (5) for the inspection of establishments and for powers of entry for that purpose¹¹;
- 197 (6) for exemptions from any of the requirements of the order¹²;
- 198 (7) for securing compliance with any requirement by the imposition of a penalty not exceeding level 4 on the standard scale¹³.

Provision may also be made by order for requiring the display by hotels and other establishments of information with respect to the prices charged there for sleeping accommodation or otherwise for securing that such information is brought to the notice of persons seeking to avail themselves of the accommodation¹⁴.

1 Such an order is subject to annulment in pursuance of a resolution of either House of Parliament and may be revoked or varied by a subsequent order: Development of Tourism Act 1969 s 17(6). See **PARLIAMENT** vol 34 (Reissue) PARA 945. At the date at which this volume states the law, no such order had been made. An order may contain such supplementary and incidental provisions as appear to be necessary or expedient, and may authorise the relevant ministers (defined in PARA 929 note 12) to make regulations as respects England and Scotland, and the Welsh Ministers as respects Wales, for purposes specified in the order: see s 17(4) (amended by SI 2005/3225; and by virtue of the Government of Wales Act 2006 s 162, Sch 11 para 32).

2 A tourist board maintaining a register has power to publish or make available for publication (gratuitously or for consideration) any information furnished to it, and any information as to any classification or grade accorded to any establishment: Development of Tourism Act 1969 s 17(7). This applies in relation to the Welsh Ministers if they are maintaining such a register as it applies in relation to a tourist board: s 17(7A) (added by SI 2005/3225; and amended by virtue of the Government of Wales Act 2006 Sch 11 para 32).

3 As to the meaning of 'tourist board' see PARA 928 note 2.

4 As to the meaning of 'Great Britain' see PARA 806 note 7.

5 Development of Tourism Act 1969 s 17(1) (amended by SI 2005/3225; and by virtue of the Government of Wales Act 2006 Sch 11 para 32).

6 An order and any regulations made under it may make different provision for different cases and provision may be made for an order to come into force at different times in relation to, or to different parts of, England, Scotland and Wales respectively: Development of Tourism Act 1969 s 17(5).

7 Development of Tourism Act 1969 s 17(2)(a). If provision is made for the classification or grading of the establishments entered in a register, provision may also be made for: (1) requiring the criteria in accordance with which classification or grading is carried out to be determined from time to time by the British Tourist Authority (as to which see PARA 928) after consultation with the other tourist boards, the Welsh Ministers and other organisations representative of trade and consumer interests likely to be affected; (2) the publication of any criteria so determined; and (3) enabling the person carrying on a registered establishment to make representations to the board concerned before any classification or grade is accorded or altered or cancelled: s 17(3) (amended by the Tourist Boards (Scotland) Act 2006 s 1(2); and by SI 2005/3225; and by virtue of the Government of Wales Act 2006 Sch 11 para 32).

8 Development of Tourism Act 1969 s 17(2)(b).

9 Development of Tourism Act 1969 s 17(2)(c).

10 Development of Tourism Act 1969 s 17(2)(d).

11 Development of Tourism Act 1969 s 17(2)(e).

12 Development of Tourism Act 1969 s 17(2)(f).

13 Development of Tourism Act 1969 s 17(2)(g) (amended by virtue of the Criminal Justice Act 1982 ss 40, 46). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

14 Development of Tourism Act 1969 s 18(1). The provisions of s 17(2)(e)-(g), (4)-(6) apply to such an order: s 18(2). At the date at which this volume states the law, no order under this provision is in force.

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934. Financial provisions.

The relevant minister¹ may pay to a tourist board² such sums in respect of its expenditure as he may with the consent of the Treasury determine³. Any sums required by a relevant minister for making such payments and any other expenses of his must be defrayed out of money provided by Parliament⁴. Any sums received by a tourist board: (1) in repayment of or as interest on any loan made by it; (2) in repayment of any grant made by it; or (3) as a dividend on or otherwise in respect of any shares or stock acquired by it, must be paid to the relevant minister⁵.

1 As to the meaning of 'relevant minister' see PARA 929 note 12.

2 As to the meaning of 'tourist board' see PARA 928 note 2.

3 Development of Tourism Act 1969 s 20(1).

4 Development of Tourism Act 1969 s 20(2).

5 Development of Tourism Act 1969 s 20(3). Any sums received by a relevant minister under s 20(3) must be paid into the Consolidated Fund: s 20(4). As to the Consolidated Fund see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 711 et seq; and **PARLIAMENT** vol 78 (2010) PARA 1028 et seq.

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(iv) Industrial Design

935. Furtherance of industrial design.

In order to promote the improvement of design in the products of British industry, the President of the Board of Trade in 1944 appointed a Council of Industrial Design¹. The Secretary of State², with the approval of the Treasury, may make grants out of money provided by Parliament to the council and to any association or body the objects of which include promoting the improvement of design in any industry or activities appearing to him to be conducive to it and as to which he is satisfied that it does not carry on any business for the purposes of making a profit³.

1 See 406 HC Official Report (5th series) col 1612.

2 As to the Secretary of State see PARA 802. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 802 note 21.

3 Industrial Organisation and Development Act 1947 s 11.

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(2) ASSISTANCE TO INDUSTRY

(i) Promotion of Local Employment

936. Powers for providing employment.

The Industrial Development Act 1982¹ confers powers upon the Secretary of State² principally for the designation of development areas, special development areas and intermediate areas³, financial assistance for industry in assisted areas⁴, premises and sites⁵, improvement of basic services⁶, and the establishment of the Industrial Advisory Board⁷.

1 The Industrial Development Act 1982 is extensively amended by the Co-operative Development Agency and Industrial Development Act 1984. For transitional provisions see the Co-operative Development Agency and Industrial Development Act (Commencement) Order 1984, SI 1984/1845 (amended by SI 1986/128). The Industrial Development Act 1982 consolidated, with certain exceptions, the Local Employment Act 1972, the Industry Act 1972 Pts I, II, the Industry Act 1980 s 18 and the Industry Act 1981 s 6.

2 As to the Secretary of State see PARA 802.

3 See the Industrial Development Act 1982 s 1; and PARA 937.

4 See the Industrial Development Act 1982 s 7; and PARAS 937, 940-944.

5 See the Industrial Development Act 1982 s 14; and PARAS 945, 949.

6 See the Industrial Development Act 1982 s 13; and PARAS 946, 949.

7 See the Industrial Development Act 1982 s 10; and PARA 944.

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PROMOTION OF TRADE AND ASSISTANCE TO INDUSTRY/(2) ASSISTANCE TO INDUSTRY/(i)
Promotion of Local Employment/937. Development areas.

937. Development areas.

The Secretary of State¹ may by order² specify any area of Great Britain³ as a development area⁴. In making such an order he must have regard to all the circumstances, actual and expected, including the state of employment and unemployment, population changes and migration, and the objectives of regional policies⁵.

An order may describe a development area by reference to any of the following kinds of area or any combination of those areas:

- 199 (1) wards;
- 200 (2) travel to work areas (being areas by reference to which the Secretary of State publishes unemployment records);
- 201 (3) any other area which has been created by, or exists or existed for the purposes of, any Act or statutory instrument, whenever passed or made,

and any reference in such an order to a named area or combination of areas is to be construed as a reference to that area as it exists on the date on which the order comes into force⁶.

1 The Secretary of State is in practice the Secretary of State for Business, Innovation and Skills: see PARA 803 note 2.

2 The order referred to is one made or having effect as if made under the Industrial Development Act 1982 s 1: s 18(1). An order under s 1 must be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: s 1(7). See **PARLIAMENT** vol 34 (Reissue) PARA 945. At the date at which this volume states the law, the order currently in force under this section is the Assisted Areas Order 2007, SI 2007/107.

'Development area' means an area for the time being specified or designated by an order made, or having effect as if made, under the Industrial Development Act 1982 s 1: s 18(1).

3 As to the meaning of 'Great Britain' see PARA 806 note 7.

4 Industrial Development Act 1982 s 1(1)(a).

5 Industrial Development Act 1982 s 1(3). See also note 2.

6 Industrial Development Act 1982 s 1(4) (substituted by the Co-operative Development Agency and Industrial Development Act 1984 s 4; and amended by the Statute Law (Repeals) Act 2004). See also note 2.

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PROMOTION OF TRADE AND ASSISTANCE TO INDUSTRY/(2) ASSISTANCE TO INDUSTRY/(i)
Promotion of Local Employment/938. Intermediate areas.

938. Intermediate areas.

The Secretary of State¹ may by order² specify any area of Great Britain³ as an intermediate area⁴. In making such an order he must have regard to all the circumstances actual and expected, including the state of employment and unemployment, population changes and migration and the objectives of regional policies⁵.

An order may describe an intermediate area by reference to any of the following kinds of area or any combination of those areas:

- 202 (1) wards;
- 203 (2) travel to work areas (being areas by reference to which the Secretary of State publishes unemployment records);
- 204 (3) any other area which has been created by, or exists or existed for the purposes of, any Act or statutory instrument, whenever passed or made,

and any reference in such an order to a named area or combination of areas is to be construed as a reference to that area as it exists on the date on which the order comes into force⁶.

1 The Secretary of State is in practice the Secretary of State for Business, Innovation and Skills: see PARA 803 note 2.

2 As to the making of such orders see PARA 937 note 2.

3 As to the meaning of 'Great Britain' see PARA 806 note 7.

4 Industrial Development Act 1982 s 1(1)(b). 'Intermediate area' means an area for the time being so specified or designated by an order made, or having effect as if made, under s 1: s 18(1).

The status as an intermediate area is important as regards the provision of premises and basic services (see PARAS 945-946) and the amount of grant which may be made for the clearance of derelict land (see PARA 972). However, regional development grants are not payable in intermediate areas.

5 Industrial Development Act 1982 s 1(3).

6 Industrial Development Act 1982 s 1(4) (substituted by the Co-operative Development Agency and Industrial Development Act 1984 s 4; and amended by the Statute Law (Repeals) Act 2004). See also note 2.

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PROMOTION OF TRADE AND ASSISTANCE TO INDUSTRY/(2) ASSISTANCE TO INDUSTRY/(i)
Promotion of Local Employment/939. Inner urban areas.

939. Inner urban areas.

The Secretary of State¹ may by order specify as a designated district any district which includes the whole or part of an inner urban area in respect of which there exists a special social need². A designated district authority³ may then give financial assistance in the form of loans for the acquisition of or for works on land⁴, or loans and grants for the establishment of common ownership or co-operative enterprises⁵.

If the designated district authority by resolution declares an area within the designated district to be an improvement area⁶ the authority may give further assistance in the form of loans or grants to improve amenities⁷ or grants for converting or improving industrial or commercial buildings⁸.

Where the Secretary of State and other ministers concerned consider that a concerted effort is required to alleviate a special social need in any inner urban area, they may arrange with the designated district authority⁹ and other appropriate persons what action should be taken¹⁰, and the Secretary of State may by order specify the area as a special area¹¹. The authority may then make loans for site preparation¹² and grants towards rent¹³ or loan interest¹⁴.

Further, the Secretary of State may by order designate an inner urban area as an urban development area with its own urban development corporation¹⁵, and the area may be designated as an enterprise zone¹⁶.

1 The Secretary of State is the Secretary of State for the Environment or, in Wales, the Welsh Ministers: see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARAS 19-20.

2 See the Inner Urban Areas Act 1978 s 1(1) (amended by the Local Government (Wales) Act 1994 s 66(6), Sch 16 para 55(1)); and **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1420.

3 'Designated district authority' in relation to a designated district means the council of that district or the council of the county which includes that district, but, in relation to a designated district which is a Welsh county or county borough, means the council of that county or county borough: Inner Urban Areas Act 1978 s 1(2) (amended by the Local Government etc Scotland Act 1994 s 180(1), Sch 13 para 114(2); and the Local Government (Wales) Act 1994 Sch 16 para 55(1)).

4 See the Inner Urban Areas Act 1978 s 2 (amended by the Local Government etc Scotland Act 1994 Sch 13 para 114(2); and the Local Government (Wales) Act 1994 Sch 16 para 55(2)); and **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1411.

5 See the Inner Urban Areas Act 1978 s 3; and **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1412.

6 See the Inner Urban Areas Act 1978 s 4, Schedule paras 1-3 (Schedule paras 1, 2 amended by the Local Government (Wales) Act 1994 Sch 16 para 55(6) and the Local Government, Planning and Land Act 1980 s 191(2) respectively); and **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARAS 1413, 1416.

7 See the Inner Urban Areas Act 1978 s 5; and **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1414.

8 See the Inner Urban Areas Act 1978 s 6 (amended by the Local Government, Planning and Land Act 1980 s 191(1)); and **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1415.

9 ie the council of that district or council of the county which includes that district, or both or, as respects any such Welsh county or county borough, the council of that county or county borough: see the Inner Urban Areas Act 1978 s 7(1)(a) (amended by the Local Government etc Scotland Act 1994 Sch 13 para 114(2); and the Local Government (Wales) Act 1994 Sch 16 para 55(3)).

- 10 See the Inner Urban Areas Act 1978 s 7 (amended by the Local Government etc Scotland Act 1994 Sch 13 para 114(2); and the Local Government (Wales) Act 1994 Sch 16 para 55(3), (4)); and **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1417.
- 11 See the Inner Urban Areas Act 1978 s 8; and **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1418.
- 12 See the Inner Urban Areas Act 1978 s 9; and **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1419.
- 13 See the Inner Urban Areas Act 1978 s 10; and **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1420.
- 14 See the Inner Urban Areas Act 1978 s 11; and **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1421.
- 15 See the Local Government, Planning and Land Act 1980 ss 134, 135 (s 134 amended by the Housing and Planning Act 1986 ss 47, 49(2), 53(2), Sch 12 Pts III, IV; and the Leasehold Reform, Housing and Urban Development Act 1993 s 179); and **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1426 et seq. Where land is in both an urban development area and a designated district the urban development authority has many of the powers of a designated district authority: see the Local Government, Planning and Land Act 1980 s 162 (amended by the Local Government (Wales) Act 1994 Sch 16 para 59(2)); and **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1435.
- 16 See the Local Government, Planning and Land Act 1980 s 179, Sch 32 (s 179 amended by SI 1990/776; Local Government, Planning and Land Act 1980 Sch 32 amended by the New Towns Act 1981 s 81, Sch 12 para 28; the Planning (Consequential Provisions) Act 1990 ss 3, 4, Sch 1, Sch 2 para 44(14); the Local Government (Wales) Act 1994 s 66(6), (8), Sch 16 para 59(9), Sch 18; and the Planning (Consequential Provisions) (Scotland) Act 1997 s 3, 4, Sch 1 Pt I, Sch 2 para 31(13)); and **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1491 et seq.

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(ii) Financial Assistance for Industry

940. Industry in assisted areas.

For specified purposes¹ the Secretary of State² may, with the consent of the Treasury, provide financial assistance³ where, in his opinion⁴: (1) such assistance is likely to provide, maintain or safeguard employment in any part of the assisted areas⁵; and (2) the undertakings for which the assistance is provided are or will be wholly or mainly in those areas⁶.

1 For these purposes see the Industrial Development Act 1982 s 7(2); and PARA 942. As to the tax treatment of grants under ss 7, 8, see the Corporation Tax Act 2009 s 102; and **INCOME TAXATION**.

2 As to the Secretary of State see PARA 802. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 802 note 21.

3 As to the nature of this financial assistance see the Industrial Development Act 1982 s 7(3), (4); and PARA 943.

4 Industrial Development Act 1982 s 7(1).

5 Industrial Development Act 1982 s 7(1)(a). 'Assisted areas' means the development areas, the intermediate areas and Northern Ireland: s 7(6). As to development areas and intermediate areas see PARAS 937-938.

6 Industrial Development Act 1982 s 7(1)(b).

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PROMOTION OF TRADE AND ASSISTANCE TO INDUSTRY/(2) ASSISTANCE TO INDUSTRY/(ii)
Financial Assistance for Industry/941. Industry generally.

941. Industry generally.

For specified purposes¹ the Secretary of State² may, with the consent of the Treasury, provide financial assistance³ where, in his opinion⁴:

- 205 (1) the financial assistance is likely to benefit the economy of the United Kingdom, or of any part or area of the United Kingdom⁵;
- 206 (2) it is in the national interest that financial assistance should be provided on the scale, and in the form and manner, proposed⁶; and
- 207 (3) the financial assistance cannot, or cannot appropriately, be so provided otherwise than by him⁷.

The aggregate of the sums paid⁸ by him, other than sums paid in respect of foreign currency guarantees⁹, and his liabilities under any guarantees¹⁰ given by him, less any sum received by him by way of repayment of loans, or repayment of principal sums paid to meet guarantees, may not at any time exceed £12,000 m¹¹. The aggregate of his liabilities under foreign currency guarantees¹² and any sums paid by him in respect of such guarantees¹³, less any sums received by him by way of repayment of principal sums paid to meet foreign currency guarantees, may not at any time exceed 1,000 million special drawing rights¹⁴.

The sums which the Secretary of State pays or undertakes to pay by way of financial assistance in respect of any one project, excluding sums paid or to be paid in respect of foreign currency guarantees, may not exceed £10 million, except so far as any excess has been authorised by a resolution of the House of Commons¹⁵.

1 le for the purposes set out in the Industrial Development Act 1982 s 7(2): see PARA 942.

2 As to the Secretary of State see PARA 802. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 802 note 21.

3 As to the financial assistance which may be given see the Industrial Development Act 1982 s 7(3), applied by s 8(2); see PARA 943. See also s 8(2), (3); and PARA 943 notes 2, 4.

4 Industrial Development Act 1982 s 8(1).

5 Industrial Development Act 1982 s 8(1)(a). As to the meaning of 'United Kingdom' see PARA 806 note 7.

6 Industrial Development Act 1982 s 8(1)(b).

7 Industrial Development Act 1982 s 8(1)(c).

8 le under the Industrial Development Act 1982 s 8. As to taxation see PARA 940 note 1.

9 Industrial Development Act 1982 s 8(4)(a). 'Foreign currency guarantee' means a guarantee given under s 8 or under the Industry Act 1972 s 8 (repealed) by the Secretary of State under which his liability is measured in a foreign currency, whether or not it is to be discharged in such a currency; for this purpose a liability measured in sterling but expressed to be subject to a limit in a foreign currency is taken to be measured in such a currency, and a liability measured in foreign currency but expressed to be subject to a limit in sterling is taken to be measured in sterling: Industrial Development Act 1982 s 8(11). 'Foreign currency' means any currency other than sterling, including special drawing rights, and 'guarantee' includes any form of insurance: ss 8(11), 9(7). As to special drawing rights see PARA 922 note 4.

10 Industrial Development Act 1982 s 8(4)(b). Liabilities in respect of interest on a principal sum so guaranteed are excluded, as are liabilities under foreign currency guarantees: s 8(4)(b).

11 Industrial Development Act 1982 s 8(4), (5) (s 8(5) substituted by the Industry and Exports (Financial Support) Act 2009 s 1(1)). The Secretary of State may, on not more than four occasions, by order made with the consent of the Treasury, increase the limit by a specified sum not exceeding £1,000 million: Industrial Development Act 1982 s 8(5) (as so substituted). Such an order must be made by statutory instrument, a draft of which has been approved by resolution of the House of Commons: s 8(10).

12 Industrial Development Act 1982 s 8(6)(a). Liability in respect of interest on a principal sum guaranteed under s 8 or under the Industry Act 1972 s 8 (repealed) is excluded: Industrial Development Act 1982 s 8(6)(a).

13 Industrial Development Act 1982 s 8(6)(b).

14 Industrial Development Act 1982 s 8(6), (7); this is subject to the supplementary provisions of s 9 as to limits on foreign currency liabilities: s 8(6). On not more than four occasions the Secretary of State may, by order made with the consent of the Treasury, increase, or further increase, the limit by a specified amount not exceeding 500 million special drawing rights: s 8(7). Such an order must be made by statutory instrument, a draft of which has been approved by resolution of the House of Commons: s 8(10). At the date at which this volume states the law, no such order had been made.

The amount to be taken into account under s 8(6) at any time in respect of a liability, if the amount of the liability is not expressed in special drawing rights, is the equivalent at that time in special drawing rights of the amount of the liability: s 9(1). That equivalent is determined by the Secretary of State by reference to: (1) the day on which the guarantee is given; and (2) the last day of each quarter at the end of which the guarantee remains in force, having regard to what appears to be the appropriate rate of exchange: s 9(2). A determination under head (1) takes effect from the date from which it was made, and remains in force until the end of the quarter in which the guarantee was given, unless it ceases to be required at an earlier date: s 9(3). A determination made under head (2) takes effect as from the end of the quarter and remains in force throughout the following quarter, unless it ceases to be required at an earlier date: s 9(4). 'Quarter' means a quarter ending with 31 March, 30 June, 30 September or 31 December in any year: s 9(7).

The amount to be taken into account under s 8(6) in respect of a sum paid or received by the Secretary of State otherwise than in special drawing rights is an amount determined by him, by reference to the day of payment or receipt and having regard to what appears to him the appropriate rate of exchange, as being the equivalent in special drawing rights of that sum: s 9(5).

The limit imposed by s 8(6) may be exceeded if the excess is attributable only to, or to a combination of, the following (s 9(6)):

- 76 (a) a quarterly revaluation (s 9(6)(a));
- 77 (b) the Secretary of State's liability under a guarantee given in pursuance of a previous undertaking so far as the amount taken into account for the purposes of the limit in respect of the liability exceeds what it would have been if determined by reference to the day on which the undertaking was given (s 9(6)(b));
- 78 (c) a payment made by the Secretary of State under a guarantee, so far as the amount to be taken into account for the purposes of the limit in respect of the payment exceeds what it would have been if determined by reference to the day on which the guarantee was given (s 9(6)(c)).

A quarterly revaluation is a determination made or having effect as if made under head (2): s 9(7).

15 Industrial Development Act 1982 s 8(8). This does not apply where the Secretary of State is satisfied that the payment or undertaking is urgently needed at a time when it is impracticable to obtain the approval of the House of Commons, in which case he must lay a statement concerning the financial assistance before each House of Parliament: s 8(9).

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PROMOTION OF TRADE AND ASSISTANCE TO INDUSTRY/(2) ASSISTANCE TO INDUSTRY/(ii)
Financial Assistance for Industry/942. Purposes for which assistance may be given.

942. Purposes for which assistance may be given.

The specified purposes for which financial assistance for industry¹ may be provided are:

- 208 (1) to promote the development or modernisation of an industry²;
- 209 (2) to promote the efficiency of an industry³;
- 210 (3) to create, expand or sustain productive capacity in an industry, or in undertakings in an industry⁴;
- 211 (4) to promote the reconstruction, reorganisation or conversion of an industry or of undertakings in an industry⁵;
- 212 (5) to encourage the growth of, or the proper distribution of undertakings in, an industry⁶; and
- 213 (6) to encourage arrangements for ensuring that any contraction of an industry proceeds in an orderly way⁷.

1 Ie under the Industrial Development Act 1982 s 7(1) or s 8(1): see PARAS 940-941.

2 Industrial Development Act 1982 s 7(2)(a). Unless the context otherwise requires, 'industry' includes any description of commercial activity, and references to an industry include references to any section of an industry: s 7(5).

3 Industrial Development Act 1982 s 7(2)(b).

4 Industrial Development Act 1982 s 7(2)(c).

5 Industrial Development Act 1982 s 7(2)(d).

6 Industrial Development Act 1982 s 7(2)(e).

7 Industrial Development Act 1982 s 7(2)(f).

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Financial Assistance for Industry/943. Nature of financial assistance.

943. Nature of financial assistance.

Financial assistance for industry¹ may be given on any terms or conditions, and by any description of investment or lending or guarantee, or by making grants². In particular, assistance may be given by:

- 214 (1) investment by acquisition of loan or share capital in any company, including an acquisition effected by the Secretary of State through another company formed for the purpose of giving³ such assistance⁴;
- 215 (2) investment by the acquisition of any undertaking or of any assets⁵;
- 216 (3) a loan, whether secured or unsecured, and whether or not carrying interest, or interest at a commercial rate⁶; or
- 217 (4) any form of insurance or guarantee to meet any contingency, and in particular to meet default on payment of a loan, or of interest on a loan, or non-fulfilment of a contract⁷.

1 Ie under the Industrial Development Act 1982 s 7(1) or s 8(1): see PARAS 940-941.

2 Industrial Development Act 1982 s 7(3). The Secretary of State may not, however, under s 8 use any money for the acquisition or assistance of banks or insurance companies: s 8(2). As to the Secretary of State see PARA 802. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 802 note 21.

3 Ie under the Industrial Development Act 1982 Pt III (ss 7-10), or the Industry Act 1972 Pt II (ss 7-9) (repealed).

4 Industrial Development Act 1982 s 7(3)(a). Assistance under this head may not be given unless the Secretary of State is satisfied that it cannot, or cannot appropriately, be given in any other way, and in giving financial assistance under this head he may not acquire any shares or stock in a company without its consent: ss 7(4), 8(3). Such restrictions would not apply to the acquisition of shares or stock under particular powers contained in another Act. See eg the British Leyland Act 1975 (repealed), which authorised the Secretary of State to acquire shares in British Leyland Motor Corporation Ltd up to a maximum expenditure of £265 million.

5 Industrial Development Act 1982 s 7(3)(b).

6 Industrial Development Act 1982 s 7(3)(c).

7 Industrial Development Act 1982 s 7(3)(d).

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PROMOTION OF TRADE AND ASSISTANCE TO INDUSTRY/(2) ASSISTANCE TO INDUSTRY/(ii)
Financial Assistance for Industry/944. The Industrial Development Advisory Board.

944. The Industrial Development Advisory Board.

The Industrial Development Advisory Board¹ (the 'board') consists of a chairman and not fewer than six nor more than 12 other members², and must include persons who appear to the Secretary of State³ to have wide experience of, and to have shown capacity in, industry, banking, accounting and finance⁴. The board is appointed by the Secretary of State to advise him with respect to the exercise of his functions⁵ as to financial assistance for industry⁶. If it makes a recommendation with respect to any matter at his request and he exercises his functions contrary to that recommendation, he must, if the board so requests, lay a statement as to the matter before Parliament⁷.

1 The board was originally established on 11 October 1972 under the Industry Act 1972 s 9(1) (repealed), and is continued by the Industrial Development Act 1982 s 10(1).

2 Industrial Development Act 1982 s 10(2).

3 As to the Secretary of State see PARA 802. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 802 note 21.

4 Industrial Development Act 1982 s 10(3).

5 In his functions under the Industrial Development Act 1982 ss 7, 8: see PARA 940 et seq.

6 Industrial Development Act 1982 s 10(1).

7 Industrial Development Act 1982 s 10(4).

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(iii) General Assistance for Industry

945. Provision of premises and sites.

In addition to particular powers given to the Welsh Development Agency (now the Welsh Ministers)¹ to provide and manage sites and premises for industrial or commercial undertakings, the Secretary of State² has specified powers in order to provide or facilitate the provision of premises in any development area³ or intermediate area⁴ for occupation by undertakings⁵ carried on or to be carried on there or for otherwise meeting the requirements of such undertakings, including requirements arising from the needs of persons employed or to be employed in them⁶. These powers are:

- 218 (1) to acquire land⁷ by agreement or, if so authorised, compulsorily⁸;
- 219 (2) to erect buildings and carry out works on land belonging to the Secretary of State⁹; and
- 220 (3) by agreement with the persons interested in any other land, to erect buildings and carry out works on the land on such terms, including terms as to repayment of expenditure incurred by the Secretary of State, as may be specified¹⁰.

Any person duly authorised in writing by the Secretary of State may, at any reasonable time, enter any land to survey it in connection with the exercise of these powers to acquire land¹¹. Where land acquired by the Secretary of State under these powers¹² is situated in a locality which is not a development area or an intermediate area, he may exercise in relation to it the following powers¹³:

- 221 (a) to preserve and maintain the land and any buildings or works on it, and to erect buildings and carry out works on it¹⁴;
- 222 (b) where there are buildings on the land, to acquire by agreement other land contiguous or adjacent to it for the purpose of erecting on it extensions to those buildings, or of erecting on it other buildings to be used with buildings on the land already acquired as part of a single undertaking¹⁵;
- 223 (c) to provide means of access, services and other facilities for meeting the requirements of undertakings carried on, or to be carried on, on the land, including requirements arising from the needs of persons employed or to be employed¹⁶.

The Secretary of State may modernise, adapt or reconstruct any buildings or other works on land acquired by him under any of these powers¹⁷.

1 As to the agency, its functions and the transfer of those functions to the Welsh Ministers, see PARA 954. The English Industrial Estates Corporation, which was abolished by the Leasehold Reform, Housing and Urban Development Act 1993 s 184(1) (Leasehold Reform, Housing and Urban Development Act 1993 (Commencement Order No 4) 1994, SI 1994/935, art 3), held similar powers. Its role was absorbed by the Urban Regeneration Agency, established by the 1993 Act and subsequently abolished on 1 April 2009: see the Housing and Regeneration Act 2008 s 49; and the Abolition of the Commission for the New Towns and the Urban Regeneration Agency (Appointed Day and Consequential Amendments) Order 2009, SI 2009/801.

2 As to the Secretary of State see PARA 802. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 802 note 21.

3 As to development areas see PARA 937.

4 As to intermediate areas see PARA 938.

5 'Undertaking' means any trade or business or any other activity providing employment: Industrial Development Act 1982 s 17(2).

6 Industrial Development Act 1982 s 14(1). Where a locality ceases to be a development area or intermediate area, the fact that it is no longer such an area does not prejudice the completion by the Secretary of State of buildings or works begun before that time in the locality under s 14(1), or the exercise by him in relation to land in the locality of his powers under s 14(1) so far as may be necessary to fulfil any agreement entered into by him before that time: s 17(3)(a). The Secretary of State is in practice the Secretary of State for Business, Innovation and Skills.

7 'Land' includes messuages, tenements and hereditaments, houses and buildings of any tenure: Industrial Development Act 1982 s 17(1).

8 Industrial Development Act 1982 s 14(1)(a). The Secretary of State may not acquire under this power any buildings other than industrial buildings, except for redevelopment or as part of a larger property which in his opinion would be incomplete without them: s 14(2) (amended by the Housing and Planning Act 1986 s 49, Sch 11 Pt I para 25). Further, the Acquisition of Land Act 1981 applies in relation to the compulsory purchase of land by the Secretary of State under the Industrial Development Act 1982 s 14; but notwithstanding anything in s 14, where at the time of publication of notice of the preparation of a draft compulsory purchase order the land is in use for the purposes of any undertaking, and that undertaking provides employment which is substantial having regard to the extent of the land used for its purposes and the nature of the undertaking, the Secretary of State may not be authorised to acquire compulsorily the interest of the person carrying on the undertaking: s 14(5). 'Industrial building' means a building: (1) which is used or designed for use for carrying on, in the course of a trade or business, a process for or incidental to: (a) the making of any article or part of any article, (b) the altering, repairing, ornamenting, finishing, cleaning, washing, freezing, packing or canning, or adapting for sale, or breaking up or demolition, of any article, or (c) the getting, dressing, or preparation for sale of minerals or the extraction or preparation for sale of oil or brine; or (2) which is used or designed for use for carrying on, in the course of a trade or business, scientific research: s 14A(1) (added by the Housing and Planning Act 1986 Sch 11 Pt I para 25). Premises which: (i) are used or designed for use for providing services or facilities ancillary to the use of other premises for the carrying on of any such process or research as is mentioned above; and (ii) are or are to be comprised in the same building or the same curtilage as those other premises, are themselves to be treated as used or designed for use for the carrying on of such a process or, as the case may be, of such research: Industrial Development Act 1982 s 14A(2) (as so added). 'Article' means an article of any description, including a ship or vessel; 'building' includes part of a building; 'minerals' includes all minerals and substances in or under land of a kind ordinarily worked for removal by underground or surface working, except that it does not include peat cut for purposes other than sale; and 'scientific research' means any activity in the fields of natural or applied science for the extension of knowledge: s 14A(3) (as so added).

9 Industrial Development Act 1982 s 14(1)(b).

10 Industrial Development Act 1982 s 14(1)(c).

11 Industrial Development Act 1982 s 14(6) (amended by the Planning (Consequential Provisions) Act 1990 s 4, Sch 2 para 57), which further applies the Town and Country Planning Act 1990 ss 324(8), 325(1)-(6), (8), (9) to such powers of entry as they apply to the Town and Country Planning Act 1990 s 324. See **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 57 et seq.

12 This includes corresponding powers under the Local Employment Act 1972 s 5 (repealed): Industrial Development Act 1982 s 14(4).

13 Industrial Development Act 1982 s 14(4).

14 Industrial Development Act 1982 s 14(4)(a).

15 Industrial Development Act 1982 s 14(4)(b).

16 Industrial Development Act 1982 s 14(4)(c).

17 Industrial Development Act 1982 s 14(3). Where the execution of such work will interrupt the use of the buildings or works by any undertaking, the Secretary of State may acquire other land by agreement, and erect buildings and carry out works on it, or on land previously acquired by him, for the purpose of providing premises for the occupation of that undertaking or of otherwise meeting its requirements: s 14(3).

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PROMOTION OF TRADE AND ASSISTANCE TO INDUSTRY/(2) ASSISTANCE TO INDUSTRY/(iii)
General Assistance for Industry/946. Improvement of basic services.

946. Improvement of basic services.

Where it appears to the minister in charge of any government department that adequate provision has not been made for the needs of any development area¹ or intermediate area² in respect of a basic service³ for which the department is responsible, and it is expedient with a view to contributing to the development of industry in that area that the service should be improved, he may, with the consent of the Treasury, make grants or loans towards the cost of the improvements to such persons and in such manner as appears to him appropriate⁴.

1 As to development areas see PARA 937.

2 As to intermediate areas see PARA 938.

3 'Basic service' means the provision of facilities for transport, whether by road, rail, water or air, or of power, lighting, heating, water, or sewerage and sewage disposal facilities, or any other service or facility on which the development of the area in question, and in particular of industrial undertakings in it, depends: Industrial Development Act 1982 s 13(2). As to the meaning of 'undertaking' see PARA 945 note 5.

4 Industrial Development Act 1982 s 13(1). These powers are in addition to any other powers of a Minister of the Crown to make grants or loans: s 13(3). Where at any time a locality ceases to be a development area or an intermediate area, the fact that it is no longer such an area does not prejudice the making of any grant or loan in any case in which the application for the grant or loan was received by the Secretary of State before that time: s 17(3)(b). Nor does it prejudice the continued operation of any agreement relating to such a grant or loan or of any other agreement relating to grants or loans entered into under Pt IV (ss 11-17), or corresponding provisions of the Local Employment Act 1972: Industrial Development Act 1982 s 17(3)(c). As to the Secretary of State see PARA 802. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 802 note 21.

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PROMOTION OF TRADE AND ASSISTANCE TO INDUSTRY/(2) ASSISTANCE TO INDUSTRY/(iii)
General Assistance for Industry/947. Advice for businesses.

947. Advice for businesses.

The Secretary of State¹ may make provision for the giving of advice, whether free of charge or otherwise, to persons carrying on or proposing to carry on a business². Not later than six months after the end of any financial year in which this power is used he must prepare and lay before Parliament a report on the exercise during the year of this power³.

1 As to the Secretary of State see PARA 802. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 802 note 21.

2 Industrial Development Act 1982 s 11(1).

3 See the Industrial Development Act 1982 s 11(2).

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PROMOTION OF TRADE AND ASSISTANCE TO INDUSTRY/(2) ASSISTANCE TO INDUSTRY/(iii)
General Assistance for Industry/948. Promotion of careers in industry.

948. Promotion of careers in industry.

The Secretary of State¹ may make such grants² or loans³ to any body as he considers appropriate⁴ for the purpose of assisting in:

- 224 (1) the promotion of the practice of engineering⁵,
- 225 (2) the encouragement and improvement of links between industry, or any part of industry, and bodies or individuals concerned with education⁶,
- 226 (3) the encouragement of young persons and others to take up careers in industry, or in any part of industry, and to pursue appropriate educational courses⁷.

He may also, with the approval of the Treasury, guarantee obligations, arising out of loans, incurred by any body established by royal charter⁸, and the members of which are appointed by him⁹ and which is, in his opinion, concerned with promoting the practice of engineering¹⁰.

1 As to the Secretary of State see PARA 802. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 802 note 21.

2 Grants may be made on such conditions as the Secretary of State may determine with the approval of the Treasury: Industrial Development Act 1982 s 12(2).

3 Loans may be made at such rates of interest as the Secretary of State may determine with the approval of the Treasury: Industrial Development Act 1982 s 12(2). He may not, however, determine a rate of interest in respect of a loan which is lower than the lowest rate for the time being determined by the Treasury under the National Loans Act 1968 s 5 (see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 736), in respect of comparable loans out of the National Loans Fund: Industrial Development Act 1982 s 12(3).

4 Industrial Development Act 1982 s 12(1).

5 Industrial Development Act 1982 s 12(1)(a).

6 Industrial Development Act 1982 s 12(1)(b).

7 Industrial Development Act 1982 s 12(1)(c).

8 Industrial Development Act 1982 s 12(5)(a).

9 Industrial Development Act 1982 s 12(5)(b).

10 Industrial Development Act 1982 s 12(4).

As to the provision of information by public bodies for the purposes of the provision of services under s 12 see the Learning and Skills Act 2000 s 138; and **EDUCATION** vol 15(2) (2006 Reissue) PARA 1159.

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949. Annual reports and statements of account of the Secretary of State.

For each financial year the Secretary of State¹ must prepare and lay before Parliament² a report on the discharge of his functions:

- 227 (1) relating to assisted areas³, financial assistance for industry⁴, the provision of premises and sites⁵ and the improvement⁶ of basic services⁷; and
- 228 (2) in relation to credits and grants for the construction of ships and offshore installations⁸, including any function in respect of guarantees given by him under the Shipbuilding Industry Act 1967⁹.

The Secretary of State may discharge this duty in any year by making a report on any of his functions mentioned in heads (1) and (2) above and one or more separate reports on the remaining functions¹⁰.

For every financial year the Secretary of State must prepare a statement of accounts, in such form as the Treasury may direct, showing the financial results for the year as respects his activities in the execution of certain of the statutory provisions¹¹ (other than activities in respect of grants)¹². He must transmit the statement to the Comptroller and Auditor General, on or before 30 November after the financial year in question, for examination and certification¹³. Copies of every such statement, together with the report of the Comptroller and Auditor General, must be laid before Parliament by the Secretary of State¹⁴.

1 As to the Secretary of State see PARA 802. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 802 note 21.

2 The report must be laid not later than six months after the end of the financial year to which it relates: Industrial Development Act 1982 s 15(1).

3 Ie under the Industrial Development Act 1982 Pt I (s 1): see PARAS 937-938.

4 Ie under the Industrial Development Act 1982 Pt III (ss 7-10): see PARA 940 et seq. The report relating to Pt III must contain a statement showing the total amount of the liabilities of the Secretary of State, excluding any liability in respect of interest on a principal sum, under guarantees given by him under Pt III or the Industry Act 1972 Pt II (ss 7-9) (repealed), or, as the case may be, Pt III (ss 10-12) of that Act, including any liabilities under guarantees given by him under the Shipbuilding Industry Act 1967 s 7 (repealed): Industrial Development Act 1982 s 15(3).

5 Ie under the Industrial Development Act 1982 s 14: see PARA 945.

6 Ie under the Industrial Development Act 1982 s 13: see PARA 946.

7 Industrial Development Act 1982 s 15(1)(a) (amended by the Statute Law (Repeals) Act 2004 s 1(2), Sch 2 para 14).

8 Ie under the Industry Act 1972 Pt III: see PARA 861.

9 Industrial Development Act 1982 s 15(1)(c). A report on the discharge of the Secretary of State's functions under the English Industrial Estates Corporation Act 1981 (see PARA 945 note 1) was also required: see the Industrial Development Act 1982 s 15(1)(d) (repealed, as from a day to be appointed, by the Leasehold Reform, Housing and Urban Development Act 1993 s 187(2), Sch 22). At the date at which this volume states the law, no such day had been appointed.

10 Industrial Development Act 1982 s 15(2) (amended by the Statute Law (Repeals) Act 2004).

11 In the Industrial Development Act 1982 ss 13, 14: see PARAS 945-946.

12 Industrial Development Act 1982 s 16(1) (amended by the Industrial Development Act 1985 ss 4(2), 6(3), Schedule).

13 Industrial Development Act 1982 s 16(2).

14 Industrial Development Act 1982 s 16(3).

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PROMOTION OF TRADE AND ASSISTANCE TO INDUSTRY/(2) ASSISTANCE TO INDUSTRY/(iii)
General Assistance for Industry/950. Disclosure of information by the government.

950. Disclosure of information by the government.

The Treasury must keep a macro-economic model suitable for demonstrating the likely effects on economic events in the United Kingdom¹ of different assumptions about the following matters: (1) government economic policies²; (2) economic events outside the United Kingdom³; and (3) such other matters, if any, as appear likely to the Treasury from time to time to have a substantial effect on economic events in the United Kingdom⁴.

The model must enable forecasts⁵ to be made of:

- 229 (a) the level of gross domestic product;
- 230 (b) unemployment;
- 231 (c) the balance of payments on current account;
- 232 (d) the general index of retail prices; and
- 233 (e) average earnings;

and of any such other economic variables, if any, from time to time as are appropriate in the opinion of the Treasury⁶. The model must be maintained on a computer⁷ and must be available to members of the public to make forecasts based on their own assumptions, using the computer during office hours on payment of such reasonable fee as the Treasury may determine⁸. The Treasury must publish, not less than twice a year, forecasts produced with the aid of the model as to such matters and based on such alternative assumptions as appear to it to be appropriate⁹.

The Treasury must, from time to time, publish an analysis of errors in such forecasts that would have remained even if the assumptions set out in the forecasts and on which they were based had been correct¹⁰.

1 As to the meaning of 'United Kingdom' see PARA 806 note 7.

2 Industry Act 1975 s 27, Sch 5 para 1(a).

3 Industry Act 1975 Sch 5 para 1(b).

4 Industry Act 1975 Sch 5 para 1(c).

5 References to forecasts under the Industry Act 1975 Sch 5 para 2 are references to forecasts relating to successive periods of three months and not to shorter periods: Sch 5 para 3. Any forecast must indicate, where possible, the margin of error attaching to it: Sch 5 para 7.

6 Industry Act 1975 Sch 5 para 2.

7 Industry Act 1975 Sch 5 para 4.

8 Industry Act 1975 Sch 5 para 5.

9 Industry Act 1975 Sch 5 para 6.

10 Industry Act 1975 Sch 5 para 8.

Halsbury's Laws of England/TRADE AND INDUSTRY (VOLUME 97 (2010) 5TH EDITION)/4. PROMOTION OF TRADE AND ASSISTANCE TO INDUSTRY/(2) ASSISTANCE TO INDUSTRY/(iv) British Technology Group Ltd/951. Dissolution of the National Research Development Corporation and the National Enterprise Board.

(iv) British Technology Group Ltd

951. Dissolution of the National Research Development Corporation and the National Enterprise Board.

All the property, rights and liabilities¹ to which the National Research Development Corporation or the National Enterprise Board was entitled before 6 January 1992 (the appointed day)² are now vested in British Technology Group Ltd³, the successor company⁴ nominated by the Secretary of State⁵. Immediately before 6 January 1992 the reserve established by the corporation⁶ and any liability of the board to the Secretary of State in respect of its public dividend capital⁷ were extinguished⁸.

The corporation and the board were to continue in existence after the appointed day until the Secretary of State was satisfied, in the case of either body, that nothing remained to be done under the relevant transitional provisions and, after consulting the body and the successor company, by order dissolved the body in question⁹. They were dissolved on 1 July 1996¹⁰.

Any agreement made, transaction effected or other thing done by, to or in relation to the board or the corporation, which was in force or effective before the appointed day, has effect as if it were so made, effected, or done by, to or in relation to the successor company, and as if the successor company were the same person in law as the board or corporation¹¹. An agreement in force immediately before the appointed day which: (1) confers or imposes rights or liabilities which vest in the successor company, and (2) refers to a member or officer of the corporation or board, has effect in relation to anything to be done after that day, as if the reference were to an appointed or corresponding officer of the successor company¹².

Provision was made for the modification of contracts of employment by substituting references to the successor company for references to the corporation and the board¹³, for the inclusion of rights and liabilities relating to pensions, allowances and gratuities in those rights and liabilities which vested in the successor company¹⁴, and for employment with the board or the corporation to be treated as employment with the successor company¹⁵.

1 References to property, rights and liabilities of the National Research Development Corporation or the National Enterprise Board are references to all such property, rights and liabilities, whether or not capable of being transferred or assigned by the corporation or board: British Technology Group Act 1991 s 1(3).

References to the property of the corporation or the board are references to property whether situated in the United Kingdom or elsewhere, and references to rights and liabilities of the corporation or the board are references to rights to which they are entitled or liabilities to which they are subject whether under the law of the United Kingdom or any part of it, or under the law of any country or territory outside the United Kingdom: s 1(4). As to the meaning of 'United Kingdom' see PARA 806 note 7.

2 ie the day appointed for the purposes of the British Technology Group Act 1991 s 1(1) (see note 5): s 16(1); see the British Technology Group Act 1991 (Appointed Day) Order 1991, SI 1991/2721.

3 See the British Technology Group Act 1991 (Nominated Company) Order 1991, SI 1991/2722 (lapsed). That order nominated the British Technology Group plc, which subsequently re-registered as a private company on 31 March 1992: see the British Technology Group Act 1991 (Government Shareholding) Order 1992, SI 1992/1437, note (a) (lapsed).

4 See the British Technology Group Act 1991 s 16(1). On the appointed day, the successor company was required to be formed and registered under the Companies Act 1985, limited by shares and wholly owned by

the Crown: British Technology Group Act 1991 s 1(2) (repealed). A company is regarded as wholly owned by the Crown at any time when each of the issued shares of the company is held by, or by a nominee of, the Treasury or the Secretary of State: s 16(2).

5 British Technology Group Act 1991 s 1(1). As to the power conferred on the board and the corporation to make preparations for the vesting of the property, rights and liabilities see Sch 1 para 1. The Secretary of State here concerned is the Secretary of State for Business, Innovation and Skills: see PARA 802.

6 Ie the reserve established under the Development of Inventions Act 1967 s 10 (repealed): British Technology Group Act 1991 s 2(1)(a) (repealed).

7 British Technology Group Act 1991 s 2(1)(b) (repealed). Section 2(1) did not operate to extinguish any liability of the board under the Industry Act 1975 Sch 2 para 5(3) or (3A) (repealed) which accrued before 6 January 1992: British Technology Group Act 1991 s 2(2) (repealed).

8 British Technology Group Act 1991 s 2(1) (repealed).

9 British Technology Group Act 1991 s 11. As to the transitional provisions see Sch 3. The period between the appointed day and the day of dissolution is known as the 'transitional period': ss 11(1), 16(1).

10 National Enterprise Board (Dissolution) Order 1996, SI 1996/1448.

11 British Technology Group Act 1991 Sch 1 para 2. Accordingly, references to the corporation or board: (1) in any agreement (written or not), deed, bond or instrument; (2) in any process or other document issued, prepared or employed for the purpose of any proceeding before any court or other tribunal or authority; and (3) in any other document (other than an enactment) relating to or affecting any property, right or liability of the corporation or board which vests in the successor company, are taken as referring to the successor company: Sch 1 para 2.

12 British Technology Group Act 1991 Sch 1 para 3.

13 British Technology Group Act 1991 Sch 1 para 4(1)(a).

14 British Technology Group Act 1991 Sch 1 para 4(1)(b).

15 British Technology Group Act 1991 Sch 1 para 4(2).

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952. Financial structure of successor company; borrowing by successor company.

If the aggregate nominal value of the issued securities¹ of the successor company² is less than the amount of the reserve and public dividend capital extinguished by the British Technology Group Act 1991³, a sum equal to the amount of the difference must be carried by the successor company to a reserve (the 'statutory reserve')⁴. The successor company may apply the statutory reserve only in paying up unissued shares of the company to be allotted to its members as fully paid bonus shares⁵.

For the purposes of any statutory accounts⁶ of the successor company:

- 234 (1) all the property, rights and liabilities to which the National Research Development Corporation or the National Enterprise Board was entitled or subject immediately before the end of the last financial year⁷ of the corporation or the board ending before 6 January 1992⁸ are to be taken to have been vested in the successor company, and to have been so vested immediately after the end of that year⁹;
- 235 (2) the value or amount of any asset or liability of the corporation or board taken to have been vested in the successor company by virtue of head (1) above is to be taken to be the value or the amount assigned to that asset or liability for the purposes of the corresponding statement of accounts prepared in respect of the financial year referred to under that head¹⁰.

The British Technology Group Act 1991 conferred on the Secretary of State a power to make loans to the successor company¹¹.

Any powers conferred on the Secretary of State by the successor company's articles of association restricting the sums of money which the company and its subsidiaries may borrow or raise are exercisable in the national interest, notwithstanding any rule of law and the provisions of any enactment¹².

1 Ie issued in pursuance of the British Technology Group Act 1991 s 3 (repealed). 'Securities', in relation to a company, includes shares, debentures, bonds and other securities of the company, whether or not constituting a charge on the assets of the company; 'shares' includes stock; and 'debenture' includes debenture stock: British Technology Group Act 1991 s 16(1).

2 Ie British Technology Group Ltd: see PARA 951 text and notes 3-5.

3 Ie by virtue of the British Technology Group Act 1991 s 2: see PARA 951.

4 British Technology Group Act 1991 s 8(1).

5 British Technology Group Act 1991 s 8(2) (amended by the Statute Law (Repeals) Act 2004). As to distributions to be made out of profits within the meaning of the Companies Act 2006 s 830 see COMPANIES vol 15 (2009) PARA 1390.

No part of the statutory reserve may count as an undistributable reserve of the successor company for the purposes of the Companies Act 2006 s 831(4)(d) (see COMPANIES vol 15 (2009) PARA 1393), but for the purpose of determining under s 831 whether the company may make a distribution at any time, any amount standing to the credit of the reserve (excluding any amount which under the British Technology Group Act 1991 s 8(2) is authorised to be, but has not yet been, applied as if it were profits available for distribution) is to be treated for

the purposes of the Companies Act 2006 s 831(4)(c) as if it were unrealised profits of the company: British Technology Group Act 1991 s 8(4) (amended by SI 2008/948).

6 le any accounts prepared by the successor company for the purposes of any provisions of the Companies Act 2006, including group accounts: British Technology Group Act 1991 s 8(7) (amended by SI 2008/948).

7 'Financial year' in relation to the corporation means a year ending on 31 March; in relation to the board it means the accounting year as defined in the Industry Act 1975 s 37(1) (repealed): British Technology Group Act 1991 s 16(1).

8 le the appointed day for the vesting of the property, rights and liabilities of the corporation and the board in the successor company: see PARA 951.

9 British Technology Group Act 1991 s 8(5)(a).

10 British Technology Group Act 1991 s 8(5)(b). The amount to be included in respect of any item is to be determined as if anything done by the corporation or the board had been done by the successor company, and, accordingly, the amount to be included in any reserves as representing the successor company's accumulated realised profits is to be determined as if any profits realised and retained by the corporation or board had been realised and retained by the company: s 8(6).

11 See the British Technology Group Act 1991 s 9 (repealed). This power was exercisable only while the successor company was wholly owned by the Crown: s 9(1) (repealed).

12 British Technology Group Act 1991 s 10(1). Any alteration of the articles of association of the successor company which has the effect of conferring or extending the power mentioned in s 10(1) after the company ceased to be wholly owned by the Crown must be disregarded: s 10(2).

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PROMOTION OF TRADE AND ASSISTANCE TO INDUSTRY/(2) ASSISTANCE TO INDUSTRY/(iv)
British Technology Group Ltd/953. Corporation tax liability of successor company.

953. Corporation tax liability of successor company.

The successor company¹ is to be treated for the purposes of the Corporation Tax Acts² as if it were the same person as the National Research Development Corporation or the National Enterprise Board³. However, the company's chargeable gains are to be computed without regard to any allowable losses of the corporation or the board⁴. Shares issued by the successor company must be treated as if they had been issued wholly in consideration of a subscription paid to that company of an amount equal to the nominal value of the shares⁵. Any debenture⁶ issued by the company must be treated as if it had been issued wholly in consideration of a loan made to that company of an amount equal to the principal sum payable under the debenture and wholly and exclusively for the purposes of the trade carried on by the company⁷.

1 Ie the British Technology Group Ltd: see PARA 951 text and notes 3-5.

2 As to the meaning of 'Corporation Tax Acts' see the Interpretation Act 1978 s 5, Sch 1; and **INCOME TAXATION**.

3 British Technology Group Act 1991 s 12(1), 16(1).

4 British Technology Group Act 1991 s 12(2) (amended by the Taxation of Chargeable Gains Act 1992 s 290(1), Sch 10 para 25). See **CAPITAL GAINS TAXATION**.

5 British Technology Group Act 1991 s 12(3).

6 As to the meaning of 'debenture' see PARA 952 note 1.

7 British Technology Group Act 1991 s 12(4).

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(v) Industry in Wales

A. FUNCTIONS AND POWERS OF THE WELSH MINISTERS

954. Constitution and purposes of the Welsh Development Agency and transfer of functions to the Welsh Ministers.

The Welsh Development Agency was established in 1975¹ for the purpose of:

- 236 (1) furthering the economic and social development of Wales or any part of Wales, and in that connection providing, maintaining and safeguarding employment²;
- 237 (2) promoting efficiency in business and international competitiveness in Wales³;
- and
- 238 (3) furthering the improvement of the environment in Wales, having regard to existing amenity⁴.

The agency was abolished and its functions were transferred to the National Assembly for Wales as from 1 April 2006⁵ and are now exercised by the Welsh Ministers⁶.

The Welsh Ministers may establish such committees for giving advice to them about the discharge of any of their functions under the Welsh Development Agency Act 1975 as they consider appropriate⁷. The members of a committee are appointed by the Welsh Ministers and may be members of the National Assembly for Wales or persons who are not members⁸.

1 See the Welsh Development Agency Act 1975 s 1(1) (as originally enacted). The Welsh Industrial Estates Corporation, which had been established by the Local Employment Act 1960 s 8 (repealed), and continued by the Local Employment Act 1972 s 10 (repealed), was dissolved, and its property, rights and liabilities vested in the agency: Welsh Development Agency Act 1975 s 7(1) (repealed). As to the transfer of staff from the corporation to the agency and compensation for loss of employment see s 7(2), Sch 2 (repealed); and the Welsh Development Agency (Compensation) Regulations 1976, SI 1976/2107 (revoked). Land in Wales held for the purposes of the Local Employment Act 1972 was vested in the agency by the Welsh Development Agency Act 1975 s 8 (repealed).

2 Welsh Development Agency Act 1975 s 1(2)(a) (amended by the Industry Act 1980 s 1(3)(a); and the Government of Wales Act 1998 s 126(2)(a)).

3 Welsh Development Agency Act 1975 s 1(2)(b) (amended by the Government of Wales Act 1998 s 126(2)(b)). 'Business' includes any industrial, commercial or professional activities (whether or not with a view to profit) and the activities of any government department or any local or other public authority: Welsh Development Agency Act 1975 s 27(1) (definition added by the Government of Wales Act 1998 s 128, Sch 14 para 10).

4 Welsh Development Agency Act 1975 s 1(2)(d).

5 See the Welsh Development Agency (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3226; and the Welsh Development Agency Act 1975 s 1(1) (substituted by SI 2005/3226). Except in relation to land in England, the functions and powers of the Secretary of State under the Welsh Development Act 1975 were also transferred to the National Assembly for Wales.

6 See the Government of Wales Act 2006 s 162, Sch 11 para 30; and PARA 802 note 21. References to the Assembly are to be construed as references to the Welsh Ministers: see Sch 11 para 32. As to the power to form committees see text and notes 7-8.

7 Welsh Development Agency Act 1975 s 6(1) (s 6 substituted by SI 2005/3226; and amended by virtue of the Government of Wales Act 2006 Sch 11 para 32).

8 Welsh Development Agency Act 1975 s 6(2) (as substituted and amended: see note 7).

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955. Functions of the Welsh Ministers in relation to industry.

The functions of the Welsh Ministers¹ under the Welsh Development Agency Act 1975 are²:

- 239 (1) to promote Wales as a location for businesses³, or assist or concert its promotion as such a location⁴;
- 240 (2) to provide finance for persons carrying on or intending to carry on businesses⁵;
- 241 (3) to carry on businesses and to establish and carry on new ones⁶;
- 242 (4) otherwise to promote or assist the establishment, growth, modernisation or development of businesses, or a particular business or particular businesses⁷;
- 243 (5) to make land available for development⁸;
- 244 (6) to provide sites, premises, services and facilities for businesses⁹;
- 245 (7) to manage sites and premises for businesses¹⁰;
- 246 (8) to bring derelict land¹¹ into use or improve its appearance¹²,
- 247 (9) to undertake the development and redevelopment of the environment¹³; and
- 248 (10) to promote private ownership of interests in businesses by the disposal of securities and other property held by the Welsh Ministers or any of their subsidiaries¹⁴.

In exercising their functions under the 1975 Act the Welsh Ministers must have regard to the requirements of agriculture and efficient land management¹⁵. They may do anything, whether in Wales or elsewhere, which is calculated to facilitate the discharge of functions specified above or is incidental or conducive to their discharge¹⁶. However, nothing authorises the disregard by the Welsh Ministers of any enactment or rule of law¹⁷.

After consulting such local authorities, national park authorities and other bodies as appear to them to have an interest, the Welsh Ministers must from time to time prepare and publish programmes for the performance of such of their functions under the 1975 Act as they consider appropriate¹⁸.

The Welsh Ministers have power in connection with their functions under the 1975 Act to:

- 249 (a) make such charge for any of their services as they think fit¹⁹;
- 250 (b) accept any gift made to them for the purpose of any such functions, and subject to the terms of the gift and the statutory provisions, apply it for those purposes²⁰; and
- 251 (c) carry out or commission the carrying out of such inquiries, investigations or researches concerning their functions under the Act as they may deem necessary or expedient for the performance of such functions²¹.

1 As to the transfer of powers under the Welsh Development Agency Act 1975 to the Welsh Ministers see PARA 954 text and notes 5-6.

2 Welsh Development Agency Act 1975 s 1(3) (amended by SI 2005/3226; and by virtue of the Government of Wales Act 2006 s 162, Sch 11 para 32).

3 As to the meaning of 'business' see PARA 954 note 3.

4 Welsh Development Agency Act 1975 s 1(3)(a) (amended by the Government of Wales Act 1998 s 126(3)(a)). The Welsh Ministers may appoint a local authority or national park authority, the development corporation of a new town or any other body or person to act as their agent in carrying out their functions under the Welsh Development Agency Act 1975 s 1(3)(a), (da), (f)-(i) (see heads (1), (5)-(9) in the text) or s 21C (see PARA 958): s 5(1) (amended by the Environment Act 1995 s 78, Sch 10 para 13(2); the Government of Wales Act 1998 Sch 14 para 4; and SI 2005/3226; and by virtue of the Government of Wales Act 2006 Sch 11 para 32). Any such authority, corporation, body or person, on being requested by the Welsh Ministers, may place the services of any of its staff at the ministers' disposal, on such terms as may be agreed with the ministers: Welsh Development Agency Act 1975 s 5(2) (amended by the Environment Act 1995 Sch 10 para 13(2); and SI 2005/3226; and by virtue of the Government of Wales Act 2006 Sch 11 para 32). As to development corporations of new towns see **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1322 et seq.

5 Welsh Development Agency Act 1975 s 1(3)(b) (amended by the Government of Wales Act 1998 s 126(3)(b)).

6 Welsh Development Agency Act 1975 s 1(3)(c) (as amended: see note 5). The Welsh Ministers may only exercise these functions through subsidiaries: s 1(5) (amended by SI 2005/3226; and by virtue of the Government of Wales Act 2006 Sch 11 para 32). 'Subsidiary' means a subsidiary as defined by the Companies Act 2006 s 1159 (see **COMPANIES** vol 14 (2009) PARA 25): Welsh Development Agency Act 1975 s 27(1) (amended by SI 2009/1941).

7 Welsh Development Agency Act 1975 s 1(3)(d) (amended by the Industry Act 1980 ss 1(3)(c), 21(1), Sch 2; and by the Government of Wales Act 1998 s 126(3)(c)).

8 Welsh Development Agency Act 1975 s 1(3)(da) (added by the Government of Wales Act 1998 s 126(3)(d)). As to the powers of the Welsh Ministers to acquire land see PARA 956.

9 Welsh Development Agency Act 1975 s 1(3)(f) (as amended: see note 5). For the purpose of providing or managing sites and premises for businesses and providing related facilities, or making land available for development, the Welsh Ministers have power to modernise, adapt or reconstruct buildings: s 9(2) (amended by SI 2005/3226; and by virtue of the Government of Wales Act 2006 Sch 11 para 32). The Welsh Ministers may, if they consider there are circumstances which justify the giving of special assistance, provide premises for the occupation of a business free of rent for such time as they think appropriate: see the Welsh Development Agency Act 1975 s 9(3) (substituted by SI 2005/3226; and amended by virtue of the Government of Wales Act 2006 Sch 11 para 32). The Welsh Ministers may also undertake or assist in the provision of means of access or other services or facilities in or for an area where this appears to them to be expedient for the purpose of contributing to or supporting the development of businesses in that area: Welsh Development Agency Act 1975 s 10 (amended by the Government of Wales Act 1998 s 128, Sch 14 para 6; and SI 2005/3226; and by virtue of the Government of Wales Act 2006 Sch 11 para 32).

10 Welsh Development Agency Act 1975 s 1(3)(g) (as amended: see note 5); and see note 9.

11 'Land' has the meaning given to it by the Interpretation Act 1978 Sch 1: Welsh Development Agency Act 1975 s 27(1) (definition substituted by the Government of Wales Act 1998 Sch 14 para 10(3)).

12 Welsh Development Act 1975 s 1(3)(h) (as amended: see note 5). As to derelict land generally see s 16; and PARA 961.

13 Welsh Development Agency Act 1975 s 1(3)(i).

14 Welsh Development Agency Act 1975 s 1(3)(j) (added by the Industry Act 1980 s 1(3)(b); amended by the Government of Wales Act 1998 s 126(3)(d); and SI 2005/3226; and by virtue of the Government of Wales Act 2006 Sch 11 para 32).

15 Welsh Development Agency Act 1975 s 1(4) (amended by SI 2005/3226; and by virtue of the Government of Wales Act 2006 Sch 11 para 32).

16 Welsh Development Agency Act 1975 s 1(6) (amended by SI 2005/3226; and by virtue of the Government of Wales Act 2006 Sch 11 para 32). In particular the Welsh Ministers may: (1) acquire, hold and dispose of securities; (2) form bodies corporate; (3) form partnerships; (4) make loans; (5) guarantee obligations arising out of loans or otherwise; (6) make grants; (7) act as agent; (8) acquire and dispose of land, plant, machinery, equipment and other property; (9) manage land, develop land, carry out works on land and maintain or assist in maintaining works; (10) make land, plant, machinery, equipment and other property available for use by other persons; (11) provide or assist in providing advisory or other services or facilities in relation to any of their functions; and (12) promote or assist in promoting publicity relating to their functions under the Welsh Development Agency Act 1975: s 1(7) (amended by SI 2005/3226; and by virtue of the Government of Wales Act 2006 Sch 11 para 32).

The power to acquire land under head (8) (as to which see the Welsh Development Agency Act 1975 s 21A; and PARA 956) includes power to acquire land to provide premises for the occupation of an undertaking the use of whose buildings has been interrupted by works of modernisation, adaptation or reconstruction as mentioned in note 9, or otherwise to meet the requirements of such an undertaking, and for that purpose the agency may erect buildings and carry out works on land so acquired: see s 9(2) (as amended: see note 9).

17 Welsh Development Agency Act 1975 s 1(16) (amended by SI 2005/3226; and by virtue of the Government of Wales Act 2006 Sch 11 para 32).

18 Welsh Development Agency Act 1975 s 1(14) (substituted by SI 2005/3226; and amended by virtue of the Government of Wales Act 2006 Sch 11 para 32). This duty includes in particular a duty to prepare and submit schemes for the improvement, development or redevelopment of the environment in Wales: see the Welsh Development Agency Act 1975 s 15; and PARA 961.

19 Welsh Development Agency Act 1975 s 4(a) (s 4 amended by SI 2005/3226; and by virtue of the Government of Wales Act 2006 Sch 11 para 32).

20 Welsh Development Agency Act 1975 s 4(b) (as amended: see note 19).

21 Welsh Development Agency Act 1975 s 4(c) (as amended: see note 19).

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956. Powers of the Welsh Ministers to acquire land.

Certain powers of the Welsh Ministers under the Welsh Development Agency Act 1975¹ are powers to acquire land by agreement; and to acquire land compulsorily if it is in Wales or, if it is in England, compulsorily if authorised to do so by the Secretary of State². Where the Welsh Ministers so acquire or have so acquired land, they have power to acquire by agreement or compulsorily (in relation to land in Wales, or, in relation to land in England, compulsorily if authorised to do so by the Secretary of State) any adjoining land which is required for the purpose of executing works for facilitating its development or use and, where the land acquired forms part of a common, an open space or a fuel or field garden allotment, any land required for the purpose of being given in exchange for it³. The Welsh Ministers may acquire rights over land by the creation of new rights as well as by acquiring rights already in existence⁴. Before acquiring land under these provisions for the purpose of the specified statutory function⁵ the Welsh Ministers must: (1) consider whether the land would or would not in their opinion be made available for development if they did not act; (2) consider the fact that planning permission has or has not been granted in respect of the land or is likely or unlikely to be granted; (3) (in a case where no planning permission has been granted in respect of the land) consult every relevant local authority⁶; and (4) consider the needs of those engaged in building, agriculture and forestry and of the community in general⁷.

Where the Welsh Ministers have acquired land for the purpose of any of their functions under the Welsh Development Agency Act 1975, they may appropriate it to the purpose of any of their other functions under that Act⁸. Where the Welsh Ministers have acquired or appropriated land for the purpose of the specified statutory function, they must, until they either dispose of the land or appropriate it to the purpose of any of their other functions under the 1975 Act, manage it and turn it to account⁹.

On the completion by the Welsh Ministers of a compulsory acquisition of land under these provisions, all private rights of way, and rights of laying down, erecting, continuing or maintaining any apparatus on, under or over the land, are extinguished and any such apparatus vests in the Welsh Ministers¹⁰. Any person who suffers loss by the extinguishment of a right or the vesting of any apparatus is entitled to compensation from the Welsh Ministers¹¹.

The erection, construction or carrying out, or maintenance, of any building or work on land which has been acquired by the Welsh Ministers under these provisions, whether done by the Welsh Ministers or by a person deriving title under them, is authorised if it is done in accordance with planning permission even if it involves interference with certain interests or rights¹², or a breach of a restriction as to the user of land arising by virtue of a contract¹³. Provision is made for the payment of compensation in respect of any interference or breach¹⁴.

Specific provision is made as to: (a) the use and development of consecrated ground and burial grounds¹⁵; (b) the use and development of land for open spaces¹⁶; (c) extinguishment of rights of way, and rights as to apparatus, of statutory undertakers¹⁷; (d) rights of entry¹⁸; (e) provision of information¹⁹; (f) regulations as to the form of documents²⁰; (g) local inquiries²¹; (h) Crown land²²; and (i) offences by corporations²³.

If the Welsh Ministers certify, in relation to a house in Wales, or the Secretary of State certifies, in relation to a house in England, that possession of a house which has been acquired by the Welsh Ministers under these provisions, and is for the time being held by the Welsh Ministers

for the purposes for which it was acquired, is immediately required for those purposes, nothing in the Rent (Agriculture) Act 1976, the Rent Act 1977 or the Housing Act 1988 may prevent the Welsh Ministers from obtaining possession of the house²⁴.

1 le under the Welsh Development Agency Act 1975 ss 1(7)(h), 16(3)(b). As to the transfer of powers under the Welsh Development Agency Act 1975 to the Welsh Ministers see PARA 954 text and notes 5-6.

2 Welsh Development Agency Act 1975 s 21A(1) (s 21A added by the Government of Wales Act 1998 s 127, Sch 13 para 2; substituted by SI 2005/3226; and amended by virtue of the Government of Wales Act 2006 s 162, Sch 11 para 32). Provisions of the Acquisition of Land Act 1981 apply, with specified modifications, to compulsory purchase under the Welsh Development Agency Act 1975 s 21A: see s 21A(8), Sch 4 paras 1, 1A, 3, 3A (s 21A(8) as so added and substituted; Sch 4 added by the Government of Wales Act 1998 Sch 13 para 3; Welsh Development Agency Act 1975 Sch 4 para 1 substituted, Sch 4 para 1A added, Sch 4 para 3 amended and Sch 4 para 3A added by SI 2005/3226; Welsh Development Agency Act 1975 Sch 4 paras 1, 1A, 3 amended by virtue of the Government of Wales Act 2006 Sch 11 para 32). Provisions of the Compulsory Purchase Act 1965 apply in relation to the acquisition of land by agreement under the Welsh Development Agency Act 1975 s 21A: Sch 4 paras 4, 9 (as so added). As to the Secretary of State see PARA 802.

3 Welsh Development Agency Act 1975 s 21A(2), (2A) (as added, substituted and amended: see note 2). 'Common' includes any land subject to be enclosed under the Inclosure Acts 1845 to 1882 and any town or village green; and 'fuel or field garden allotment' means any allotment set out as a fuel allotment, or a field garden allotment, under an Inclosure Act: Welsh Development Agency Act 1975 s 27(1) (definitions added by the Government of Wales Act 1998 s 128, Sch 14 para 10(2)). 'Open space' means any land laid out as a public garden or used for the purposes of public recreation or any land which is a disused burial ground: Welsh Development Agency Act 1975 s 27(1) (definition substituted by the Government of Wales Act 1998 Sch 14 para 10(3)).

4 Welsh Development Agency Act 1975 s 21A(3) (as added, substituted and amended: see note 2).

5 le under the Welsh Development Agency Act 1975 s 1(3)(da); see PARA 955.

6 A 'relevant local authority' is the council of any county, county borough or district, any joint planning board, or any national park authority in whose area the land or any part of it is situated: Welsh Development Agency Act 1975 s 21A(5) (as added and substituted: see note 2).

7 Welsh Development Agency Act 1975 s 21A(4) (as added, substituted and amended: see note 2).

8 Welsh Development Agency Act 1975 s 21A(6) (as added, substituted and amended: see note 2).

9 Welsh Development Agency Act 1975 s 21A(7) (as added, substituted and amended: see note 2). 'Dispose' includes dispose by sale or exchange or dispose by lease (whether by grant or assignment) and related expressions are to be construed accordingly: s 27(1) (definition added by the Government of Wales Act 1998 Sch 14 para 10(2)).

10 Welsh Development Agency Act 1975 Sch 4 para 5(1) (as added (see note 2); amended by SI 2005/3226; and by virtue of the Government of Wales Act 2006 Sch 11 para 32). This does not apply to any right vested in, or apparatus belonging to, statutory undertakers for the purpose of the carrying on of their undertaking: Welsh Development Agency Act 1975 Sch 4 para 5(2) (as so added). However, it does have effect in relation to any right or apparatus not falling within Sch 4 para 5(2) subject to any direction given by the Welsh Ministers before the completion of the acquisition that Sch 4 para 5(1) is not to apply, and to any agreement which may be made (whether before or after the completion of the acquisition) between the Welsh Ministers and the person in or to whom the right or apparatus is vested or belongs: Sch 4 para 5(3) (as so added and amended).

11 Welsh Development Agency Act 1975 Sch 4 para 5(4) (as added (see note 2); amended by SI 2005/3226; and by virtue of the Government of Wales Act 2006 Sch 11 para 32). Compensation is determined under the Land Compensation Act 1961: Welsh Development Agency Act 1975 Sch 4 para 5(5) (as so added).

12 le any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support: Welsh Development Agency Act 1975 Sch 4 para 6(3) (as added: see note 2).

13 Welsh Development Agency Act 1975 Sch 4 para 6(1) (as added (see note 2); amended by SI 2005/3226; and by virtue of the Government of Wales Act 2006 Sch 11 para 32). However, nothing in this provision authorises interference with any right of way or any right of laying down, erecting, continuing or maintaining apparatus on, under or over land which is vested in or belongs to statutory undertakers for the purpose of the carrying on of their undertaking: Welsh Development Agency Act 1975 Sch 4 para 6(2) (as so added). Neither is

any act or omission authorised on the part of any person which is actionable at the suit of any person on any grounds other than an interference or breach: Sch 4 para 6(7) (as so added).

14 See the Welsh Development Agency Act 1975 Sch 4 para 6(4)-(6) (as added (see note 2); Sch 4 para 6(5), (6) amended by SI 2005/3226; and by virtue of the Government of Wales Act 2006 Sch 11 para 32).

15 Welsh Development Agency Act 1975 Sch 4 paras 7, 10 (as added (see note 2); Sch 4 para 7 amended by SI 2005/3226; and by virtue of the Government of Wales Act 2006 Sch 11 para 32).

16 Welsh Development Agency Act 1975 Sch 4 paras 8, 10 (as added (see note 2); Sch 4 para 8 amended by SI 2005/3226; and by virtue of the Government of Wales Act 2006 Sch 11 para 32).

17 Welsh Development Agency Act 1975 Sch 4 paras 11-13 (as added (see note 2); amended by SI 2005/3226; and by virtue of the Government of Wales Act 2006 Sch 11 para 32).

18 Welsh Development Agency Act 1975 Sch 4 paras 14, 15 (as added (see note 2); amended by SI 2005/3226; and by virtue of the Government of Wales Act 2006 Sch 11 para 32).

19 Welsh Development Agency Act 1975 Sch 4 paras 18, 19 (as added (see note 2); amended by SI 2005/3226; and by virtue of the Government of Wales Act 2006 Sch 11 para 32).

20 Welsh Development Agency Act 1975 Sch 4 para 20 (as added (see note 2); amended by SI 2005/3226; and by virtue of the Government of Wales Act 2006 Sch 11 para 32).

21 Welsh Development Agency Act 1975 Sch 4 para 21 (as added (see note 2); amended by SI 2005/3226; and by virtue of the Government of Wales Act 2006 Sch 11 para 32).

22 Welsh Development Agency Act 1975 Sch 4 para 22 (as added (see note 2); amended by SI 2005/3226; and by virtue of the Government of Wales Act 2006 Sch 11 para 32).

23 Welsh Development Agency Act 1975 Sch 4 para 23 (as added: see note 2).

24 Welsh Development Agency Act 1975 Sch 4 para 16 (as added (see note 2); amended by SI 2005/3226; and by virtue of the Government of Wales Act 2006 Sch 11 para 32). As to the Acts mentioned in the text see further **HOUSING; LANDLORD AND TENANT**.

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957. Disposal of land by the Welsh Ministers.

In exercising any power under the Welsh Development Agency Act 1975 to dispose of land¹, the Welsh Ministers² may not dispose of land for a consideration less than the best that can reasonably be obtained except as provided by statute³, or otherwise as they consider appropriate⁴.

1 As to the meaning of 'dispose' see PARA 956 note 9; and as to the meaning of 'land' see PARA 955 note 11.

2 As to the transfer of powers under the Welsh Development Agency Act 1975 to the Welsh Ministers see PARA 954 text and notes 5-6.

3 Ie under the Welsh Development Agency Act 1975 s 16(7) (see PARA 961).

4 Welsh Development Agency Act 1975 s 21B (added by the Government of Wales Act 1998 s 127, Sch 13 para 2; amended by SI 2005/3226; and by virtue of the Government of Wales Act 2006 s 162, Sch 11 para 32).

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958. Powers to advise on land matters.

If requested to do so by a public authority, the Welsh Ministers¹ may advise the authority about disposing of any of the authority's land in Wales to other persons, and assist the authority in disposing of the land². In this context, 'public authority' means: (1) a government department; (2) a county council, county borough council or community council; (3) a national park authority; (4) a development corporation for a new town; (5) a local health board, special health authority or NHS trust; (6) a body corporate established by or under an enactment for the purpose of carrying on under national ownership any industry or part of an industry; (7) any statutory undertakers; or (8) any other public authority, body or undertakers specified in an order made by the Welsh Ministers³.

The Welsh Ministers may assist: (a) the council of a county or county borough in Wales in making an assessment of land in its area which is, in its opinion, available and suitable for development; (b) a joint planning board in Wales in making an assessment of land in its district which is, in its opinion, available and suitable for development; or (c) a national park authority for a national park in Wales in making an assessment of land in the national park which is, in its opinion, available and suitable for development⁴.

1 As to the transfer of powers under the Welsh Development Agency Act 1975 to the Welsh Ministers see PARA 954 text and notes 5-6.

2 Welsh Development Agency Act 1975 s 21C(1) (s 21C added by the Government of Wales Act 1998 s 127, Sch 13 para 2; amended by SI 2005/3226; and by virtue of the Government of Wales Act 2006 s 162, Sch 11 para 32). As to the meaning of 'land' see PARA 955 note 11.

3 Welsh Development Agency Act 1975 s 21C(2) (as added and amended (see note 2); further amended by SI 2007/961). As to the meaning of 'statutory undertakers' see PARA 959 note 3. A person who holds a licence under the Transport Act 2000 Pt I Ch I (ss 1-40) (air traffic services: see **AIR LAW** vol 2 (2008) PARA 139 et seq) is not be considered a statutory undertaker for the purposes of the Welsh Development Agency Act 1975 s 21C: s 27(1C) (added by SI 2001/4050).

4 Welsh Development Agency Act 1975 s 21C(3) (as added and amended: see note 2).

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959. Powers of entry.

Any duly authorised person¹ may at any reasonable time enter any land² (1) for the purposes of surveying it³, or estimating its value, in connection with any proposal to acquire⁴ that land or any other land; or (2) in connection with any claim for compensation in respect of any such acquisition⁵; or (3) for the purpose of surveying it in order to enable the Welsh Ministers to determine whether to make an application for planning permission for the carrying out of development of that land⁶. Admission as of right to occupied land may not be demanded except on 24 hours' notice to the occupier⁷.

It is the duty of a person exercising a power of entry to take reasonable care to avoid damage or injury to plant, machinery, equipment, livestock, crops or enclosures, and on leaving the land to secure it as effectively against unauthorised entry as he found it⁸. Where any land is damaged in the exercise of a power of entry, compensation may be recovered by any person interested in the land from the Welsh Ministers⁹.

A person who intentionally obstructs a person acting in the exercise of the powers described above is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale¹⁰. If any person who is admitted into a factory, workshop or workplace in the exercise of a power of entry under these provisions discloses to any person any information obtained by him there as to any manufacturing process or trade secret, then unless the disclosure is made in the course of performing his duty in connection with the purpose for which he was authorised to enter the premises, he is guilty of an offence¹¹ and liable on summary conviction to a fine not exceeding the statutory maximum, or on conviction on indictment to imprisonment for up to two years or a fine or both¹².

1 The authority must be given in writing by the Welsh Ministers: Welsh Development Agency Act 1975 s 21A(8), Sch 4 para 14(1) (s 21A and Sch 4 added by the Government of Wales Act 1998 s 127, Sch 13 paras 2, 3 respectively; Welsh Development Agency Act 1975 Sch 4 para 14(1), (2) amended by SI 2005/3226; and by virtue of the Government of Wales Act 2006 s 162, Sch 11 para 32). Evidence of it must be produced if required by the occupier of the land or anyone acting on his behalf: Welsh Development Agency Act 1975 Sch 4 para 15(1)(a) (as so added). As to the transfer of powers under the Welsh Development Agency Act 1975 to the Welsh Ministers see PARA 954 text and notes 5-6.

2 As to the meaning of 'land' see PARA 955 note 11.

3 The power to survey land includes power to search and bore in order to ascertain the nature of the subsoil or the presence of minerals or contaminants in it: Welsh Development Agency Act 1975 Sch 4 para 14(3) (as added: see note 1). No works may be carried out under Sch 4 para 14(3) unless notice of the intention to do so was included in the notice required by Sch 4 para 15(1)(b) (see text and note 7): Sch 4 para 15(5)(a) (as so added). If the land in question is held by statutory undertakers who object to the proposed works on the ground that the carrying out of those works would be seriously detrimental to the carrying on of their undertakings, the works must not be carried out without the authority of the appropriate minister: Sch 4 para 15(5)(b) (as so added).

'Statutory undertakers' means: (1) persons authorised by virtue of any enactment to carry on any railway, light railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertaking, or any undertaking for the supply of hydraulic power; and (2) the Civil Aviation Authority, a person who holds a licence under the Transport Act 2000 Pt I Ch I (ss 1-40) (air traffic services: see AIR LAW vol 2 (2008) PARA 139 et seq) (to the extent that the person is carrying out activities authorised by the licence), any universal service provider in connection with the provision of a universal postal service, and any other authority, body or undertakers which by virtue of any enactment are to be treated as statutory undertakers for the purposes of the Town and Country Planning Act 1990: Welsh Development Agency Act 1975 s 27(1) (definition

amended by the Gas Act 1986 s 67(4), Sch 9 Pt I; the Water Act 1989 s 190(1), Sch 25 para 51; the Electricity Act 1989 s 112(4), Sch 18; the Planning (Consequential Provisions) Act 1990 s 4, Sch 2 para 34(3)(b); the Coal Industry Act 1994 s 67(1), (8), Sch 9 para 16, Sch 11 Pt II; SI 2001/1149; and SI 2001/4050). 'Appropriate minister', in relation to any statutory undertakers in relation to whom it is defined by the Town and Country Planning Act 1990 s 265 or any other Act, has the meaning assigned by the Act so defining it: Welsh Development Agency Act 1975 s 27(1) (definition amended by the Planning (Consequential Provisions) Act 1990 Sch 2 para 34(3)(a)). 'Universal service provider' has the same meaning as in the Postal Services Act 2000; and references to the provision of a universal postal service are to be construed in accordance with that Act: Welsh Development Agency Act 1975 s 27(1) (definition added by SI 2001/1149). The undertaking of a universal service provider so far as relating to the provision of a universal postal service is to be taken to be his statutory undertaking for the purposes of the Welsh Development Agency Act 1975; and references in that Act to his undertaking are to be construed accordingly s 27(1A) (added by SI 2001/1149). The undertaking of a person who holds a licence under the Transport Act 2000 Pt I Ch I is not to be considered to be a statutory undertaking for the purposes of the Welsh Development Agency Act 1975 except to the extent that it is the person's undertaking as licence holder; and references in that Act to the person's undertaking are to be construed accordingly: s 27(1B) (added by SI 2001/4050).

- 4 Ie under the Welsh Development Agency Act 1975 s 21A: see PARA 956.
- 5 Welsh Development Agency Act 1975 Sch 4 para 14(1)(a), (b) (as added: see note 1).
- 6 Welsh Development Agency Act 1975 Sch 4 para 14(2) (as added and amended: see note 1).
- 7 Welsh Development Agency Act 1975 Sch 4 para 15(1)(b) (as added: see note 1).
- 8 Welsh Development Agency Act 1975 Sch 4 para 15(6) (as added: see note 1).
- 9 Welsh Development Agency Act 1975 Sch 4 para 15(3) (as added (see note 1); amended by SI 2005/3226; and by virtue of the Government of Wales Act 2006 Sch 11 para 32). Except in so far as may be otherwise provided by regulations made by the Welsh Ministers under the Welsh Development Agency Act 1975 Sch 4 para 15(4), any question of disputed compensation under Sch 4 para 15(3) must be referred to and determined by the Upper Tribunal; and the provisions of the Land Compensation Act 1961 s 4 apply to the determination of any such question, subject to any necessary modifications and to the provisions of any regulations so made: Welsh Development Agency Act 1975 Sch 4 para 15(4) (as so added; amended by SI 2005/3226; SI 2009/1307; and by virtue of the Government of Wales Act 2006 Sch 11 para 32). See **COMPULSORY ACQUISITION OF LAND**.
- 10 Welsh Development Agency Act 1975 Sch 4 para 15(2) (as added: see note 1). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.
- 11 Welsh Development Agency Act 1975 Sch 4 para 15(7) (as added: see note 1).
- 12 Welsh Development Agency Act 1975 Sch 4 para 15(8) (as added: see note 1). As to the statutory maximum see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 140.

Halsbury's Laws of England/TRADE AND INDUSTRY (VOLUME 97 (2010) 5TH EDITION)/4.
PROMOTION OF TRADE AND ASSISTANCE TO INDUSTRY/(2) ASSISTANCE TO INDUSTRY/(v)
Industry in Wales/A. FUNCTIONS AND POWERS OF THE WELSH MINISTERS/960. Power to obtain information.

960. Power to obtain information.

If the Welsh Ministers, with a view to performing any of their functions under the Welsh Development Agency Act 1975 relating to any land¹, consider that they ought to have information connected with that or any other land, they may serve a notice on one or more of the following:

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- 16. (1) the occupier of the land;
- 17. (2) any person who has an interest in the land either as freeholder, mortgagee or lessee, or who directly or indirectly receives rent for the land;
- 18. (3) any person who, in pursuance of an agreement between himself and a person interested in the land, is authorised to manage the land or to arrange for the letting of it².

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The notice must specify the land and the function of the Welsh Ministers in question, and the provision which confers the function³. It must require the recipient to furnish to the Welsh Ministers within a period specified in it (which must not be less than 14 days beginning with the day on which the notice is served) the nature of his interest in the land, and the name and address of each person whom the recipient of the notice believes to be the occupier of the land and of each person whom he believes to be a person who has an interest in the land or is authorised to manage or let the land⁴.

Refusal or failure without reasonable excuse to give such information, or knowingly or recklessly making a false statement in complying with the notice, is an offence punishable on summary conviction by a fine not exceeding level 4 on the standard scale⁵.

The council of every county and county borough in Wales, every joint planning board for a district in Wales, and every national park authority for a national park in Wales must supply the Welsh Ministers with such information as they may by regulations prescribe (being information which the Welsh Ministers may need for performing their functions under the 1975 Act), and with such certificates supporting the information as the Welsh Ministers may specify in the regulations⁶. Unless the Welsh Ministers direct otherwise⁷, if a local planning authority in Wales receives an application for planning permission, it must as soon as practicable after receipt send a copy of the application to the Welsh Ministers⁸, and on the grant of planning permission relating to land in Wales, the local planning authority must as soon as practicable send a copy of the notification of the planning permission to the Welsh Ministers⁹.

1 As to the transfer of powers under the Welsh Development Agency Act 1975 to the Welsh Ministers see PARA 954 text and notes 5-6. As to the meaning of 'land' see PARA 955 note 11.

2 Welsh Development Agency Act 1975 s 21A(8), Sch 4 para 18(1) (s 21A and Sch 4 added by the Government of Wales Act 1998 s 127, Sch 13 paras 2, 3 respectively; Welsh Development Agency Act 1975 Sch 4 para 18(1), (2) amended by SI 2005/3226; and by virtue of the Government of Wales Act 2006 s 162, Sch 11 para 32).

3 Welsh Development Agency Act 1975 Sch 4 para 18(1) (as added: see note 2).

4 le who is a person mentioned in head (2) or (3) in the text: Welsh Development Agency Act 1975 Sch 4 para 18(2) (as added and amended: see note 2).

5 Welsh Development Agency Act 1975 Sch 4 para 18(3) (as added: see note 2). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

6 Welsh Development Agency Act 1975 Sch 4 para 19(1) (as added (see note 2); amended by SI 2005/3226; and by virtue of the Government of Wales Act 2006 Sch 11 para 32).

7 Welsh Development Agency Act 1975 Sch 4 para 19(4) (as added (see note 2); amended by SI 2005/3226; and by virtue of the Government of Wales Act 2006 Sch 11 para 32).

8 Welsh Development Agency Act 1975 Sch 4 para 19(2) (as added (see note 2); amended by SI 2005/3226; and by virtue of the Government of Wales Act 2006 Sch 11 para 32).

9 Welsh Development Agency Act 1975 Sch 4 para 19(3) (as added (see note 2); amended by SI 2005/3226; and by virtue of the Government of Wales Act 2006 Sch 11 para 32).

Halsbury's Laws of England/TRADE AND INDUSTRY (VOLUME 97 (2010) 5TH EDITION)/4. PROMOTION OF TRADE AND ASSISTANCE TO INDUSTRY/(2) ASSISTANCE TO INDUSTRY/(v) Industry in Wales/A. FUNCTIONS AND POWERS OF THE WELSH MINISTERS/961. The environment and derelict land.

961. The environment and derelict land.

The duty of the Welsh Ministers¹ to prepare and publish, after consultation with such local authorities, national park authorities and other bodies as appear to them to have an interest, programmes for the performance of the Welsh Ministers' functions under the Welsh Development Agency Act 1975, includes in particular a duty to prepare and publish programmes, to be implemented either by the Welsh Ministers themselves, or by the ministers acting jointly with any other authority or person, or through persons or authorities acting on behalf of the ministers, for the improvement, development or redevelopment of the environment in Wales².

Where it appears to the Welsh Ministers that steps should be taken for the purpose of reclaiming or improving land³ which is derelict, neglected or unsightly⁴, or of enabling such land to be brought into use⁵, then they may⁶:

- 252 (1) make grants to any person in respect of relevant expenditure⁷ incurred by that person, of such amounts and payable at such times and subject to such conditions as the Welsh Ministers may from time to time determine⁸;
- 253 (2) after consultation with such local authorities⁹ or other bodies as appear to it to have an interest, acquire that land, or any other land¹⁰; and
- 254 (3) carry out any works on such land or other land¹¹.

After carrying out works on land so acquired, the Welsh Ministers may dispose¹² of it free of charge to a local authority or the development corporation of a new town for the purpose of its use as a public open space¹³.

1 Ie under the Welsh Development Agency Act 1975 s 1(14): see PARA 955 text and note 18. As to the transfer of powers under the Welsh Development Agency Act 1975 to the Welsh Ministers see PARA 954 text and notes 5-6.

2 Welsh Development Agency Act 1975 s 15(1) (s 15 substituted by SI 2005/3226; and amended by virtue of the Government of Wales Act 2006 s 162, Sch 11 para 32). The Welsh Ministers may make payments to any authority or person of such amount and in such manner as they may determine for carrying out work which the ministers consider will contribute to the purposes of such a programme: Welsh Development Agency Act 1975 s 15(2) (as so substituted).

3 As to the meaning of 'land' see PARA 955 note 11.

4 Welsh Development Agency Act 1975 s 16(1)(a), (2)(a) (s 16 substituted by the Derelict Land Act 1982 s 2(1), (2), (4); and amended by SI 2005/3226; and further amended by virtue of the Government of Wales Act 2006 Sch 11 para 32). These powers also apply, except as regards the power under the Welsh Development Agency Act 1975 s 16(3)(a) (see text and notes 7-8), to land which is not actually derelict, neglected or unsightly, but which is likely to become so by reason of actual or apprehended collapse of the surface due to relevant operations which have ceased to be carried out: see s 16(2)(b) (as so substituted). 'Relevant operations' means underground mining operations other than operations for the purpose of the working and getting of coal, or of coal and other minerals worked with coal, or for the purpose of getting any product from coal in the course of working and getting coal: s 16(9) (as so substituted).

5 Welsh Development Agency Act 1975 s 16(1)(b) (as substituted: see note 4).

6 The Welsh Ministers' powers in this regard are in addition to and not in derogation from any other power conferred by the Welsh Development Agency Act 1975: s 16(3) (as substituted and amended: see note 4). Thus they have power to acquire land under s 1(7)(h), and power to survey land under Sch 4 para 14: see PARA 956.

7 'Relevant expenditure' means expenditure incurred, with the Welsh Ministers' approval, in or in connection with: (1) the carrying out, for the purpose specified in text and notes 3-6, of any works to which the Welsh Development Agency Act 1975 s 16(1) applies; (2) the carrying out of a survey of such land to determine whether such works should be undertaken (whether or not such works are carried out); and (3) the acquisition of such land by a local authority in whose area it is situated: s 16(4) (as substituted and amended: see note 4). As to the meaning of 'local authority' see note 9.

8 Welsh Development Agency Act 1975 s 16(1), (3)(a) (as substituted and amended: see note 4). Grants may be made in such manner as appears to the Welsh Ministers to be requisite: s 16(5) (as so substituted and amended). The maximum amount of a grant (to a person other than a local authority in whose area the land is situated) is 80% of the relevant expenditure, or, in the case of a periodical grant in respect of costs from time to time incurred or treated as incurred in respect of the borrowing of money to defray the relevant expenditure, 80% of the costs so incurred or treated as incurred: s 16(6) (as so substituted). The figure of 80% may be altered by the Welsh Ministers by order: s 16(6) (as so substituted and amended). A statutory instrument containing such an order may make such transitional provision as appears to the Welsh Ministers to be necessary or expedient: ss 16(8), 28(1) (s 16 as substituted (see note 4); and s 16(8) further substituted by SI 2005/3226; and amended by virtue of the Government of Wales Act 2006 Sch 11 para 32; Welsh Development Agency Act 1975 s 28(1) amended by the Government of Wales Act 1998 Sch 14 para 11). The figure of 80% has been changed to 100%: see the Welsh Development Agency (Derelict Land) Order 2004, SI 2004/907.

9 'Local authority' means a county council or county borough council: Welsh Development Agency Act 1975 s 16(9) (as substituted (see note 4); and amended by the Local Government (Wales) Act 1994 s 66(6), Sch 16 para 48; and the Environment Act 1995 s 120(3), Sch 24). In relation to land in a national park for which a national park authority is the local planning authority, 'local authority' includes a national park authority: Environment Act 1995 s 70, Sch 9 para 7. As to national parks see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 636 et seq.

10 Welsh Development Agency Act 1975 s 16(3)(b) (as substituted and amended (see note 4); also amended by the Government of Wales Act 1998 s 152, Sch 18 Pt III).

11 Welsh Development Agency Act 1975 s 16(3)(c) (as substituted: see note 4).

12 As to the meaning of 'dispose' see PARA 956 note 9

13 Welsh Development Agency Act 1975 s 16(7) (as substituted and amended: see note 4). As to new town development corporations see **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1322 et seq. As to the meaning of 'open space' see PARA 956 note 3.

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B. THE WELSH INDUSTRIAL DEVELOPMENT ADVISORY BOARD

962. The Welsh Industrial Development Advisory Board.

The Welsh Ministers¹ must appoint a board called the 'Welsh Industrial Development Advisory Board' to advise them with respect to the exercise of their functions relating to the giving of financial assistance to industry in assisted areas². The board consists of a chairman and between four and seven other members³. The members must include persons who appear to the Welsh Ministers to have wide experience of, and to have shown capacity in, industry, banking, accounting, finance or the organisation or representation of workers⁴. If the board makes a recommendation with respect to any matter at the request of the Welsh Ministers but they exercise their functions contrary to it, the Welsh Ministers must, if the board so requests, publish a statement as to the matter⁵.

1 As to the transfer of powers under the Welsh Development Agency Act 1975 to the Welsh Ministers see PARA 954 text and notes 5-6.

2 Welsh Development Agency Act 1975 s 13(1) (amended by the Industrial Development Act 1982 s 19(1), Sch 2 Pt II para 13; by SI 2005/3226; and by virtue of the Government of Wales Act 2006 s 162, Sch 11 para 32). The functions referred to are those under the Industrial Development Act 1982 s 7, as to which see PARAS 940, 942-943. The Welsh Ministers have power to make provision for the transfer of the functions of the board, and about the accounts and audit of the board and reports on its functions: see the Government of Wales Act 1998 ss 28, 144, Sch 4 para 12, Sch 17 para 1 (s 28 amended by the Government of Wales Act 2006 s 160(1), Sch 10 paras 41, 42; Government of Wales Act 1998 s 144 amended by the Care Standards Act 2000 s 72, Sch 2 para 18; the Learning and Skills Act 2000 s 73(1), (3)(a); the Health (Wales) Act 2003 s 7(1), Sch 3 para 11; the Public Audit (Wales) Act 2004 ss 65(1)-(3), 72, Sch 4; the Public Services Ombudsman (Wales) Act 2005 s 39(1), Sch 6 paras 61, 66, Sch 7; the Commissioner for Older People (Wales) Act 2006 s 1(2), Sch 1 para 20; the Government of Wales Act 2006 ss 160(1), 163, Sch 10 para 45, Sch 12; the Health Act 2006 s 80(1), Sch 8 para 43; by SI 2008/948; and by virtue of the National Health Service (Consequential Provisions) Act 2006 s 2, Sch 1 paras 281, 298; Government of Wales Act 1998 Sch 17 para 1 amended by the Care Standards Act 2000 ss 6, 54, 66, Sch 1 para 27(d); and the Public Audit (Wales) Act 2004 ss 65(1), (4), 72, Sch 4).

3 Welsh Development Agency Act 1975 s 13(2).

4 Welsh Development Agency Act 1975 s 13(3) (amended by SI 2005/3226; and by virtue of the Government of Wales Act 2006 Sch 11 para 32).

5 Welsh Development Agency Act 1975 s 13(4) (substituted by SI 2005/3226; and amended by virtue of the Government of Wales Act 2006 Sch 11 para 32).

Halsbury's Laws of England/TRADE AND INDUSTRY (VOLUME 97 (2010) 5TH EDITION)/4.
PROMOTION OF TRADE AND ASSISTANCE TO INDUSTRY/(2) ASSISTANCE TO INDUSTRY/(v)
Industry in Wales/C. FINANCIAL PROVISIONS/963. Borrowing and guarantees.

C. FINANCIAL PROVISIONS

963. Borrowing and guarantees.

For the purpose of exercising their functions under the Welsh Development Agency Act 1975, the Welsh Ministers¹ may borrow money from any person (including their wholly owned subsidiaries²), but any borrowing in a currency other than sterling requires the approval of the Treasury³.

It is the duty of the Welsh Ministers to secure that none of their wholly owned subsidiaries formed in pursuance of the exercise of the ministers' functions under the 1975 Act borrows money otherwise than from the ministers or from another wholly owned subsidiary of the ministers, except with the ministers' consent⁴.

The Treasury may guarantee the repayment of principal, the payment of interest, and the discharge of any other financial obligations in connection with any sums borrowed by the Welsh Ministers in connection with their functions under the 1975 Act⁵. Immediately after giving such a guarantee, the Treasury must lay a statement of it before each House of Parliament⁶. Where any sum is required⁷ for fulfilling a guarantee, the Treasury must lay before each House of Parliament a statement as to that sum for each financial year, beginning with the year in which the sum was issued and ending with the year in which all liability in respect of the sum and interest on it is discharged⁸. If any sums are issued in fulfilment of a guarantee, the Welsh Ministers must make to the Treasury, at such time and in such manner as the Treasury directs, payments of such amounts as the Treasury so directs in or towards repayment of those sums and payments of interest at a rate directed by the Treasury, on what is outstanding in respect of those sums⁹.

1 As to the transfer of powers under the Welsh Development Agency Act 1975 to the Welsh Ministers see PARA 954 text and notes 5-6.

2 'Wholly owned subsidiary' has the same meaning as in the Companies Act 2006 s 1159 (see COMPANIES vol 14 (2009) PARA 25): Welsh Development Agency Act 1975 s 27(1) (definition amended by SI 2009/1941).

3 Welsh Development Agency Act 1975 s 18(1), Sch 3 para 3 (s 18(1) substituted by the Industry Act 1979 s 1, Schedule; Welsh Development Agency Act 1975 Sch 3 para 3 substituted by SI 2005/3226; and amended by virtue of the Government of Wales Act 2006 s 162, Sch 11 para 32).

4 Welsh Development Agency Act 1975 Sch 3 para 5 (substituted by SI 2005/3226; and amended by virtue of the Government of Wales Act 2006 Sch 11 para 32).

5 Welsh Development Agency Act 1975 Sch 3 para 6(1) (amended by the Miscellaneous Financial Provisions Act 1983 s 4, Sch 2; by SI 2005/3226; and by virtue of the Government of Wales Act 2006 Sch 11 para 32). The guarantee may be given in such manner and on such conditions as the Treasury thinks fit: Welsh Development Agency Act 1975 Sch 3 para 6(1).

6 Welsh Development Agency Act 1975 Sch 3 para 6(2).

7 Any sum so required must be charged on and issued out of the Consolidated Fund: Welsh Development Agency Act 1975 Sch 3 para 6(3).

8 Welsh Development Agency Act 1975 Sch 3 para 6(2).

9 Welsh Development Agency Act 1975 Sch 3 para 6(4) (amended by SI 2005/3226; and by virtue of the Government of Wales Act 2006 Sch 11 para 32). Any sums so received must be paid into the Consolidated Fund: Welsh Development Agency Act 1975 Sch 3 para 6(5).

Halsbury's Laws of England/TRADE AND INDUSTRY (VOLUME 97 (2010) 5TH EDITION)/4. PROMOTION OF TRADE AND ASSISTANCE TO INDUSTRY/(2) ASSISTANCE TO INDUSTRY/(vi) Transfer of Control of Important Manufacturing Undertakings/964. Prohibition orders.

(vi) Transfer of Control of Important Manufacturing Undertakings

964. Prohibition orders.

The Secretary of State¹ may make a prohibition order if it appears to him: (1) that there is a serious and immediate probability of a change of control² of an important manufacturing undertaking³; and (2) that that change of control would be contrary to the interests⁴ of the United Kingdom or of any substantial part of it⁵. The order must specify the undertaking⁶, prohibit the change of control⁷ and prohibit or restrict the doing of things which would in the opinion of the Secretary of State constitute or lead to it⁸, and may make such incidental or supplementary provision as appears to him to be necessary or expedient⁹. The order, which must be made by statutory instrument¹⁰, must be laid before Parliament after being made¹¹.

Nothing in a prohibition order has effect so as to apply to any person in relation to his conduct outside the United Kingdom unless he is a citizen of the United Kingdom and Colonies¹², a body corporate incorporated in the United Kingdom¹³ or a person carrying on business in the United Kingdom either alone or in partnership with others¹⁴, but in a case falling within any of these categories the order may extend to acts or omissions outside the United Kingdom¹⁵.

No criminal proceedings lie against a person on the ground that he has committed, or aided, abetted, counselled or procured the commission of, or conspired or attempted to commit, or encouraged others to commit, any contravention of a prohibition order¹⁶. However, this does not limit any person's right to bring civil proceedings in respect of any contravention or apprehended contravention of such an order, and, without prejudice to that right, compliance with such an order may be enforced by civil proceedings by the Crown for an injunction or any other appropriate relief¹⁷.

1 As to the Secretary of State see PARA 802.

2 As to the meaning of 'change of control' see PARA 965.

3 Industry Act 1975 ss 11(1), 13(1)(a). 'Important manufacturing undertaking' means an undertaking which, in so far as it is carried out in the United Kingdom, is wholly or mainly engaged in manufacturing industry and appears to the Secretary of State to be of special importance to the United Kingdom or to any substantial part of it: s 11(2). 'Manufacturing industry' means activities described in any of the minimum list headings in Orders III to XIX of the Standard Industrial Classification; 'industry' includes any description of commercial activity, and any section of an industry, and 'industrial' has a corresponding meaning: Industry Act 1975 s 37(1). In determining the extent to which an undertaking is engaged in manufacturing industry, the following activities are treated as manufacturing industry so far as they relate to products manufactured or to be manufactured by the undertaking, namely: research, transport, distribution, machinery repair and maintenance, sales and marketing, storage, mining and quarrying, production and distribution of energy and heating, administration, staff training and packaging: s 37(3). 'Standard Industrial Classification' means the revised edition published by HM Stationery Office in 1968 of the publication of that name prepared by the Central Statistical Office of the Chancellor of the Exchequer: s 37(1) (definition substituted by the Co-operative Development Agency and Industrial Development Act 1984 s 5(2), Sch 1 Pt II para 1; and subsequently amended by SI 1989/992). As to the meaning of 'United Kingdom' see PARA 806 note 7.

4 'Interests' means interests which relate to public policy, public security or public health: Industry Act 1975 s 13(7) (added by SI 1998/3035).

5 Industry Act 1975 s 13(1)(b).

6 Industry Act 1975 s 13(1).

7 Industry Act 1975 s 13(1)(i).

8 Industry Act 1975 s 13(1)(ii).

9 Industry Act 1975 s 13(1).

10 Industry Act 1975 s 38(1). Any power to make an order under the Act includes power to make an order varying or revoking a previous order: s 38(2).

11 Industry Act 1975 s 15(1). Unless approved by each House it ceases to have effect after 28 days, but without prejudice to anything previously done by virtue of it or to the making of a new order: s 15(1). No account is taken of any period during which Parliament is dissolved or prorogued or both Houses are adjourned for more than four days: s 15(2).

12 Industry Act 1975 s 18(1)(a). As to categories of citizenship see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM**.

13 Industry Act 1975 s 18(1)(b). A body corporate is deemed not to be resident in the United Kingdom if it is not incorporated there: s 18(2). As to incorporation by registration under the Companies Act 2006 see **COMPANIES** vol 14 (2009) PARA 119 et seq; and as to companies formed outside England and Wales see **COMPANIES** vol 15 (2009) PARA 1826 et seq.

14 Industry Act 1975 s 18(1)(c).

15 Industry Act 1975 s 18(1).

16 Industry Act 1975 s 17(1) (amended by virtue of the Serious Crime Act 2007 s 63, Sch 6 para 3 to take account of the abolition by s 59 of the common law offence of incitement and its replacement by offences under the 2007 Act).

17 Industry Act 1975 s 17(2).

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PROMOTION OF TRADE AND ASSISTANCE TO INDUSTRY/(2) ASSISTANCE TO INDUSTRY/(vi)
Transfer of Control of Important Manufacturing Undertakings/965. Meaning of 'change of control'.

965. Meaning of 'change of control'.

There is a change of control of an important manufacturing undertaking¹ only upon the happening of a relevant event². 'Relevant event' means any event as a result of which:

- 255 (1) the person carrying on the whole or part of the undertaking ceases to be resident in the United Kingdom³;
- 256 (2) a person not resident there acquires the whole or part of the undertaking⁴;
- 257 (3) a body corporate resident there but controlled⁵ by a person not resident there acquires the whole or part of the undertaking⁶;
- 258 (4) a person not resident there becomes able to exercise or control the exercise of 30, 40 or 50 per cent of votes that may be cast at a general meeting of a body corporate carrying on the whole or part of the undertaking or such a percentage of votes in any other body corporate which is in control of such a body⁷; or
- 259 (5) a person resident there and able to exercise or control the exercise of 30, 40 or 50 per cent of those votes in a body corporate carrying on the whole or part of the undertaking or in any other body corporate which is in control of such a body ceases to be resident there⁸.

1 As to the meaning of 'important manufacturing undertaking' see PARA 964 note 3.

2 Industry Act 1975 s 12(1).

3 Industry Act 1975 s 12(2)(a). As to residence of a body corporate see PARA 964 note 13. As to the meaning of 'United Kingdom' see PARA 806 note 7.

4 Industry Act 1975 s 12(2)(b).

5 For these purposes a body corporate or an individual entitled to cast 30% or more of the votes that may be cast at a general meeting of a body corporate is in control of that body: Industry Act 1975 s 12(3)(a). Control of a body corporate which has control of another body corporate gives control of the latter body: s 12(3)(b). Any power to direct the holder of shares or stock in a body corporate as to the exercise of his votes at a general meeting of that body is treated as entitlement to cast the votes in respect of those shares or that stock: s 12(4). Two or more persons acting together in concert may be treated as a single person for the purposes of any of the provisions of Pt II (ss 11-20) as to change of control: s 12(5).

6 Industry Act 1975 s 12(2)(c).

7 Industry Act 1975 s 12(2)(d), (6).

8 Industry Act 1975 s 12(2)(e), (6).

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PROMOTION OF TRADE AND ASSISTANCE TO INDUSTRY/(2) ASSISTANCE TO INDUSTRY/(vi)
Transfer of Control of Important Manufacturing Undertakings/966. Vesting orders.

966. Vesting orders.

The Secretary of State¹ may make a vesting order, with the approval of the Treasury, if: (1) the conditions for the making of a prohibition order² are satisfied³; or (2) a prohibition order has been made in relation to an important manufacturing undertaking⁴; or (3) he has learnt of circumstances which appear to him to constitute a change of control⁵ of such an undertaking and is satisfied that the change is contrary to the interests⁶ of the United Kingdom or of any substantial part of it⁷.

The order, which may only be made if he is satisfied that it is necessary in the national interest⁸ and that, having regard to all the circumstances, that interest cannot, or cannot appropriately, be protected in any other way⁹, directs that on a specified day: (a) certain share capital and loan capital¹⁰, or (b) any assets which are employed in the undertaking, are to vest in himself or in his nominees, and may contain such incidental or supplementary provision as appears to him to be necessary or expedient¹¹. It may also contain provisions by virtue of which rights, liabilities or incumbrances to which assets or capital which will vest under it are subject¹² will be extinguished in consideration of the payment of compensation¹³, will be transferred to the Secretary of State¹⁴ or will be charged on the compensation¹⁵. If the order provides for the vesting of assets employed in an undertaking it may prohibit or set aside any transfer of those assets or of any right in respect of them¹⁶. A vesting order setting aside a transfer must give a right to compensation¹⁷.

The order, which must be made by statutory instrument¹⁸, may not be made unless a draft has been laid before, and approved by a resolution of, each House of Parliament¹⁹, and until a compensation order has also been laid before each House²⁰.

1 The Secretary of State is in practice the Secretary of State for Business, Innovation and Skills, as to whom see PARA 802.

2 As to prohibition orders see PARA 964. The conditions referred to are those set out in heads (1) and (2) in the text thereto.

3 Industry Act 1975 s 13(2)(a).

4 Industry Act 1975 s 13(2)(b). As to the meaning of 'important manufacturing undertaking' see PARA 964 note 3.

5 As to the meaning of 'change of control' see PARA 965. The change of control must have occurred on or after 1 February 1975: Industry Act 1975 s 13(2)(c).

6 As to the meaning of 'interests' see PARA 964 note 4.

7 Industry Act 1975 s 13(2)(c). As to the meaning of 'United Kingdom' see PARA 806 note 7.

8 'National interest' means the national interest in relation to public policy, public security or public health: Industry Act 1975 s 13(8) (added by SI 1998/3035).

9 Industry Act 1975 s 13(3).

10 Ie: (1) where the Secretary of State considers that the interests of the United Kingdom or of any substantial part of it cannot, or cannot appropriately, be protected unless all the share capital of the relevant body corporate vests, the share capital and so much of any of its loan capital as is specified in the order; and (2) in any other case, that part of the share capital of any relevant body corporate which, when the order is laid before Parliament under the Industry Act 1975 s 15(3), appears to him to be involved in the change of control: s

13(4). 'Relevant body corporate' means: (a) a body corporate incorporated in the United Kingdom carrying on there as the whole or a major part of its business there the whole or part of an important manufacturing undertaking; or (b) a body corporate incorporated in the United Kingdom which is the holding company of a group of companies carrying on there as the whole or the major part of its business there the whole or part of such an undertaking, and as to which one of two conditions is satisfied: s 13(5). These conditions are: (i) that it appears to the Secretary of State that there is a serious and immediate probability of the happening of an event in relation to the company which would constitute a change of control of the undertaking; or (ii) that he has learnt of circumstances relating to the company which appear to constitute a change of control of the undertaking on or after 1 February 1975: s 13(6). 'Holding company' means a holding company as defined by the Companies Act 2006 s 1159 (see **COMPANIES** vol 14 (2009) PARA 25); Industry Act 1975 s 37(1) (amended by SI 2009/1941).

11 Industry Act 1975 s 13(2) (amended by the British Technology Group Act 1991 s 17(2), Sch 2 Pt I). This includes provisions to safeguard any capital which is to vest and any assets of a body corporate (or of its subsidiary) whose capital is to vest, and to prohibit or set aside any transfers of it or of rights in respect of it: Industry Act 1975 s 16(3). A vesting order setting aside a transfer entitles the body corporate or subsidiary to recover any transferred assets: s 16(5). 'Subsidiary' means a subsidiary as defined by the Companies Act 2006 s 1159 (see **COMPANIES** vol 14 (2009) PARA 25); Industry Act 1975 s 37(1) (amended by SI 2009/1941).

12 Industry Act 1979 s 16(1).

13 Industry Act 1975 s 16(1)(a). As to compensation see s 19; and PARA 968.

14 Industry Act 1975 s 16(1)(b) (s 16(1)(b), (4) amended by the British Technology Group Act 1991 Sch 2 Pt I).

15 Industry Act 1975 s 16(1)(c).

16 Industry Act 1975 s 16(2). It also entitles the Secretary of State to recover any transferred capital or assets: s 16(4) (as amended: see note 14). The transfers to which s 16 applies include transfers made before a draft of the order is laid before Parliament but after the Secretary of State has served notice on the person concerned of his intention to lay the draft: s 16(7). 'Person concerned' means: (1) in the case of an order such as is mentioned in head (a) in the text, the relevant body corporate; and (2) in the case of an order such as is mentioned in head (b) in the text, the person carrying on the undertaking: s 16(8). The notice must be published in the London Gazette: s 16(9).

Any notice or other document required or authorised under the Act to be served on any person may be served either by delivering it to him or by leaving it at his proper address or by sending it by post: s 36(1). Notice is duly served on a body corporate or a firm if it is served on the secretary or clerk of the body corporate or a partner of the firm: s 36(2). For the purpose of s 36 and what is now the Interpretation Act 1978 s 7, Sch 2 para 3 (see **STATUTES** vol 44(1) (Reissue) PARA 1388), the proper address: (a) of a secretary or clerk of a body corporate, is the registered or principal office of the body corporate; (b) of the partner of a firm, is the principal office of the firm; and (c) of any other person, is his last known address: Industry Act 1975 s 36(3).

17 See the Industry Act 1975 s 16(6).

18 See PARA 964 text and note 10.

19 Industry Act 1975 s 15(3). The draft may not be so laid: (1) in a case under head (1) in the text, after the end of three months from the service of a notice under s 16(7) (see note 16); (2) in a case under head (2) in the text, after the end of three months from the making of the prohibition order (unless the circumstances mentioned in head (1) or head (3) in the text exist when the draft is laid before Parliament); (3) in a case under head (3) in the text, after the end of three months from the date when the Secretary of State learnt of circumstances there mentioned: s 15(4). On the expiry of 28 days from the laying of the draft in a House, the order proceeds in that House, whether or not it has been referred to a committee under Standing Orders relating to private Bills, as if its provisions would require to be enacted by a public Bill which cannot be referred to a committee: s 15(5). In reckoning these 28 days no account is taken of periods during which Parliament is dissolved or prorogued or the House is adjourned for more than four days: s 15(6). As to the procedure see **PARLIAMENT** vol 34 (Reissue) PARA 941 et seq.

20 See the Industry Act 1975 s 19(1); and PARA 968.

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PROMOTION OF TRADE AND ASSISTANCE TO INDUSTRY/(2) ASSISTANCE TO INDUSTRY/(vi)
Transfer of Control of Important Manufacturing Undertakings/967. Extension of vesting orders.

967. Extension of vesting orders.

Where 30 per cent or more of the share capital of a body corporate vests in the Secretary of State¹ or his nominees by virtue of a vesting order², the Secretary of State must serve³ on the holders of the rest of the share capital, and on any other persons who to his knowledge have a present or prospective right to subscribe for shares in the body corporate, a notice informing them of the making of the order and of their right to require the order to extend to their share capital or rights⁴. The recipient of such a notice may within three months of its date serve on the Secretary of State a counter-notice requiring the order so to extend⁵, whereupon, from the date of the counter-notice, the vesting order has effect as if the share capital or rights specified in the counter-notice had been specified in the vesting order⁶.

1 As to the Secretary of State see PARA 802.

2 As to vesting orders see PARA 966.

3 The notice must be served within 28 days of the making of the order: Industry Act 1975 s 14(1). As to the service of notices see PARA 966 note 16.

4 Industry Act 1975 s 14(1), (4) (amended by the British Technology Group Act 1991 s 17(2), Sch 2 Pt I).

5 Industry Act 1975 s 14(2).

6 Industry Act 1975 s 14(3).

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Transfer of Control of Important Manufacturing Undertakings/968. Compensation orders.

968. Compensation orders.

No vesting order¹ may be made until there has also been laid before both Houses of Parliament a compensation order providing for the payment of compensation for the acquisition of the capital or assets and for any extinguishment or transfer of rights, liabilities or incumbrances². The order:

- 260 (1) must identify the persons or descriptions of persons to be compensated and determine their rights and duties in relation to any compensation paid to them³,
- 261 (2) must specify the manner in which it is to be paid⁴;
- 262 (3) must provide for the payment of interest on compensation in respect of the relevant period⁵;
- 263 (4) may make different provision in relation to different descriptions of capital or assets and different rights, liabilities or incumbrances⁶; and
- 264 (5) may contain incidental and supplementary provisions⁷.

The order must be made by statutory instrument⁸ and is subject to special parliamentary procedure⁹.

Compensation may be paid out of money provided by Parliament¹⁰ or by the issue of government stock¹¹.

1 As to vesting orders see PARAS 966-967.

2 Industry Act 1975 s 19(1).

3 Industry Act 1975 s 19(3)(a).

4 Industry Act 1975 s 19(3)(b). See also note 11.

5 Industry Act 1975 s 19(3)(c). 'Relevant period' means: (1) in relation to capital or assets, the period commencing with the date of vesting and ending with the date of payment of compensation; and (2) in relation to rights, liabilities and incumbrances, the period commencing with the date of their extinguishment and ending on the date of payment: s 19(3) (amended by the British Technology Group Act 1991 s 17(2), Sch 2 Pt I).

6 Industry Act 1975 s 19(3)(d).

7 Industry Act 1975 s 19(3)(e).

8 See PARA 964 text and note 10.

9 Industry Act 1975 s 19(2). As to special parliamentary procedure see **PARLIAMENT** vol 34 (Reissue) PARA 912 et seq. The Statutory Orders (Special Procedure) Act 1945 s 6(2) proviso is modified for this purpose by the Industry Act 1975 s 19(5).

10 Industry Act 1975 s 19(4)(a).

11 Industry Act 1975 s 19(4)(b). 'Government stock' means stock the principal of which and the interest on which is charged on the National Loans Fund with recourse to the Consolidated Fund: s 19(4)(b). The power conferred by s 19(3)(b) is a power to provide for compensation by one or both of the means specified in s 19(4); s 19(4). As to the National Loans Fund see generally **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 727-739. As to the Consolidated Fund see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 711 et seq; **PARLIAMENT** vol 78 (2010) PARA 1028 et seq.

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Transfer of Control of Important Manufacturing Undertakings/969. Disputes as to vesting and compensation orders.

969. Disputes as to vesting and compensation orders.

A procedure is prescribed for the determination of any dispute which arises out of a vesting order¹ or compensation order² to which one of the parties is the Secretary of State³ or a body corporate the whole or part of whose share capital has vested by virtue of the order in him or his nominees⁴, either if the order requires it to be submitted to arbitration⁵ or if one of the parties wishes it to be so submitted⁶. Where the procedure applies to a dispute arising out of an order it applies also to any dispute arising out of a related order⁷.

If a party to such a dispute serves on the other party or parties to the dispute, at a time when no proceedings relating to it have been commenced in any court, a notice that he wishes it to be determined by arbitration, the Secretary of State must by order⁸ establish a tribunal⁹ to determine the dispute¹⁰. The tribunal's procedure is determined by rules to be made by the Lord Chancellor¹¹, although certain of the statutory arbitration provisions apply¹². The tribunal may refer any question arising (other than a question which is primarily one of law) to a person appointed by it for the purpose, for inquiry and report¹³. The tribunal's order is enforceable as if it were an order of the High Court¹⁴. Appeal lies to the Court of Appeal on any question of law or fact from any determination or order of the tribunal with respect to compensation¹⁵ on the setting aside by a vesting order of any transfer of capital or assets¹⁶. The tribunal may, and if so ordered by the Court of Appeal must, state in the form of a special case for determination by that court any question of law arising in the proceedings¹⁷.

1 As to vesting orders see PARAS 966-967.

2 As to compensation orders see PARA 968.

3 As to the Secretary of State see PARA 802.

4 Industry Act 1975 s 20(3) (amended by the British Technology Group Act 1991 s 17(2), Sch 2 Pt I). That amendment removed from the Industry Act 1975 s 20(3) a reference to the National Enterprise Board, but omitted to make further changes necessary in order to make sense of the provision after the removal of that reference; the provision is here treated as if those changes had been made.

5 Industry Act 1975 s 20(3)(a).

6 Industry Act 1975 s 20(3)(b).

7 Industry Act 1975 s 20(3). For this purpose a vesting order and a compensation order are related if they relate to the same capital or assets: s 20(4).

8 The order must be made by statutory instrument: see PARA 964 text and note 10. It must be laid before each House of Parliament: Industry Act 1975 s 20(1), Sch 3 para 2. See **PARLIAMENT** vol 34 (Reissue) PARA 942.

9 The tribunal is a court of record with an official seal which is judicially noticed: Industry Act 1975 Sch 3 para 3. It sits, as the Lord Chancellor, after consulting the Lord Chief Justice of England and Wales, the Lord President of the Court of Session and the Lord Chief Justice of Northern Ireland, directs either as a single tribunal or in two or more divisions, and consists of a president, who must be a person who satisfies the judicial-appointment eligibility condition on a five-year basis or a member of the Bar of Northern Ireland or a solicitor of the Court of Judicature of Northern Ireland of at least five years standing, appointed by the Lord Chancellor, and two other members appointed by the Secretary of State, with respectively business and financial experience: Industry Act 1975 Sch 3 para 4(1) (numbered as such by the Constitutional Reform Act 2005 s 15(1), Sch 4 Pt 1 para 81(1), (2)(a); amended by the Courts and Legal Services Act 1990 s 71(2), Sch 10 para 39; the Constitutional Reform Act 2005 ss 15(1), 59(5), Sch 4 Pt 1 para 81(2)(b), Sch 11 Pt 3 para 5; and the Tribunals,

Courts and Enforcement Act 2007 s 50, Sch 10 Pt 1 para 12). As to the judicial-appointment eligibility condition see **COURTS**. The Lord Chief Justice of England and Wales may nominate a judicial office holder (as defined in the Constitutional Reform Act 2005 s 109(4): see **COURTS**) to exercise his functions under the Industry Act 1975 Sch 3 para 4: Sch 3 para 4(2) (added by the Constitutional Reform Act 2005 Sch 4 Pt 1 para 81(2)(c)). The Lord Chancellor's functions under the Industry Act 1975 Sch 3 paras 4(1)(a) and 17 (see text and note 11) are protected functions for the purposes of the Constitutional Reform Act 2005 s 19: see s 19(5), Sch 7 para 4; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. Any appointment to the office of president of the tribunal under the Industry Act 1975 Sch 3 para 4 must be made, by virtue of the Constitutional Reform Act 2005 s 85, Sch 14 Pt 3 in accordance with ss 85-93, 96: see **COURTS**.

The members of a tribunal hold office for such period as may be determined at the time of appointment, and are eligible for re-appointment; however, a member may resign on giving one month's written notice to the appointor, or the appointor may declare the member's office vacant on the ground of unfitness to continue, or his office may become vacant if he is the subject of a bankruptcy restrictions order or an interim order: Industry Act 1975 Sch 3 para 6(1) (renumbered and amended by the Judicial Pensions and Retirement Act 1973 s 26(10), Sch 6 para 52; further amended by SI 2006/1722). No appointment as president may be such as to extend beyond the appointee's 70th birthday; but this may be extended by authorisation under the Judicial Pensions and Retirement Act 1993 s 26(4)-(6); Industry Act 1975 Sch 3 para 6(2) (added by the Judicial Pensions and Retirement Act 1993 Sch 6 para 52). If a member becomes by reason of illness or other infirmity temporarily incapable of performing his duties, his appointor must appoint some other fit person in his place for any period not exceeding six months at a time: Industry Act 1975 Sch 3 para 7. A member's appointor is the Lord Chancellor or the Secretary of State, as described above: Sch 3 para 8. Where the appointor is, by virtue of Sch 3 para 8(a), the Lord Chancellor, the power conferred by Sch 3 para 6(1)(b) to declare a member's office vacant may be exercised only with the concurrence of the appropriate senior judge: Sch 3 para 8A (Sch 3 paras 8A, 8B added by the Constitutional Reform Act 2005 Sch 4 Pt 1 para 81(5)). The appropriate senior judge is the Lord Chief Justice of England and Wales, unless the member to be removed exercises functions wholly or mainly in Northern Ireland, in which case it is the Lord Chief Justice of Northern Ireland: Industry Act 1975 Sch 3 para 8B (as so added).

A tribunal may appoint such officers as it considers necessary for assisting it in the proper execution of its duties: Sch 3 para 11. Members are paid such remuneration and allowances as the Secretary of State, with the approval of the Treasury, may determine; an officer and any person to whom the dispute is referred under Sch 3 para 27 (see text and note 13) may be paid such remuneration and allowances as the Secretary of State, with the approval of the Treasury, may determine; the Secretary of State must pay any such remuneration or allowances, and must defray any other expenses out of money provided by Parliament: Sch 3 para 12; Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981, SI 1981/1670. Members are disqualified for membership of the House of Commons: see the House of Commons Disqualification Act 1975 s 1(1)(f), Sch 1 Pt II (amended for this purpose by the Industry Act 1975 Sch 3 para 9); and **PARLIAMENT** vol 78 (2010) PARA 908. The tribunal is under the direct supervision of the Administrative Justice and Tribunals Council: Tribunals and Inquiries Act 1992 s 1(1)(a), Sch 1 para 25; Tribunals, Courts and Enforcement Act 2007 s 45; cf **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 55 et seq.

10 Industry Act 1975 Sch 3 para 1. Where a dispute has been submitted to a tribunal, any other dispute of the kind described in the text must be determined by the same tribunal: s 20(2).

11 Industry Act 1975 Sch 3 para 17(1). See note 9 as to the Lord Chancellor's function under Sch 3 para 17. At the date at which this volume states the law, no such rules had been made. They must be made by statutory instrument, which is subject to annulment in pursuance of a resolution of either House of Parliament: Sch 3 para 17(1), (2). See **PARLIAMENT** vol 34 (Reissue) PARA 945. Separate provision is made in relation to procedure in Scotland: see Sch 3 paras 18-25, 26(b).

12 See the Industry Act 1975 Sch 3 para 14 (amended by the Arbitration Act 1996 s 107(1), Sch 3 para 30), which provides that the provisions of the Arbitration Act 1996 Pt I (ss 1-84) with respect to oaths and affirmations, the correction of errors in awards, the summoning, attendance and examining of witnesses, the production of documents, and costs (see **ARBITRATION** vol 2 (2008) PARA 1201 et seq) apply with necessary modifications, but no other provisions of that Part apply.

13 See the Industry Act 1975 Sch 3 para 27. Such report may be adopted wholly or partly by the tribunal and, if adopted, may be incorporated in an order of the tribunal: Sch 3 para 27.

14 Industry Act 1975 Sch 3 para 26(a). See **CIVIL PROCEDURE**.

15 Ie under the Industry Act 1975 s 16(6): see PARA 966 text to note 17.

16 Industry Act 1975 Sch 3 para 16.

17 Industry Act 1975 Sch 3 para 15. For the procedure see CPR Pt 52; *Practice Direction--Appeals* PD 52 para 18; and **CIVIL PROCEDURE**.

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PROMOTION OF TRADE AND ASSISTANCE TO INDUSTRY/(2) ASSISTANCE TO INDUSTRY/(vii)
Utilisation of Derelict Land/970. Powers relating to derelict land.

(vii) Utilisation of Derelict Land

970. Powers relating to derelict land.

Derelict land is land in England¹ which is derelict, neglected or unsightly² and, in relation to a local authority³ in whose area it is situated, land which is not derelict, neglected or unsightly but is likely to become so through actual or apprehended collapse of the surface as the result of the carrying out of relevant operations⁴ which have ceased to be carried out⁵.

In relation to such land, the Secretary of State⁶ may, with the consent of the Treasury, make grants⁷ out of money provided by Parliament to any persons in respect of relevant expenditure⁸ incurred by them, where it appears to him that steps should be taken for the purpose of reclaiming or improving any such land⁹, or enabling it to be brought into use¹⁰.

Under the Housing and Regeneration Act 2008, the Secretary of State may appoint the Homes and Communities Agency¹¹ to act as the agent of the Secretary of State in connection with such derelict land functions¹² as the Secretary of State may specify¹³.

1 The Derelict Land Act 1982 s 1 extends only to England: s 1(13). Similar powers in respect of Wales are exercisable by the Welsh Ministers: see the Welsh Development Agency Act 1975 s 16; and PARA 961.

2 Derelict Land Act 1982 s 1(2)(a).

3 'Local authority' means a county, district or London borough council, or the Common Council of the City of London: Derelict Land Act 1982 s 1(11) (amended by the Local Government Act 1985 s 102(2), Sch 17; and the Environment Act 1995 s 120(3), Sch 24). In relation to land in a national park for which a national park authority is the local planning authority, 'local authority' in the Derelict Land Act 1982 includes a national park authority: Environment Act 1995 s 70, Sch 9 para 7. 'National park' means an area designated by an order made under the National Parks and Access to the Countryside Act 1949 s 5(3) (see OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 636): Derelict Land Act 1982 s 1(11). By the Norfolk and Suffolk Broads Act 1988 s 2(6), Sch 3 Pt II para 43 (amended by the Environment Act 1995 s 78, Sch 10 para 27), the Broads Authority is to be treated for the purposes of the Derelict Land Act 1982 as a national park authority, and the Broads (as defined by the Norfolk and Suffolk Broads Act 1988 s 2(3)) as a national park for which it is the local planning authority.

4 'Relevant operations' means underground mining operations other than operations for the purpose of the working and getting of coal, or of coal and other minerals worked with coal, or for the purpose of getting any product from coal in the course of working and getting coal: Derelict Land Act 1982 s 1(11).

5 Derelict Land Act 1982 s 1(2)(b).

6 As to the Secretary of State see PARA 802. It appears that the Secretary of State here concerned is the Secretary of State for Communities and Local Government.

7 As to grants see PARA 972.

8 'Relevant expenditure' means expenditure incurred with the approval of the Secretary of State after 30 August 1982 in or in connection with: (1) the carrying out, for the purpose mentioned in the text, of any works on the derelict land or any other land; (2) the carrying out of a survey of the derelict land to determine whether works for that purpose should be undertaken (whether or not such works are carried out); and (3) in relation to a local authority in whose area the derelict land is situated, the acquisition for that purpose of the derelict land or any other land: Derelict Land Act 1982 ss 1(3), 5(3).

9 Derelict Land Act 1982 s 1(1)(a).

10 Derelict Land Act 1982 s 1(1)(b).

11 As to the Homes and Communities Agency see the Housing and Regeneration Act 2008 s 1, Sch 1; and **TOWN AND COUNTRY PLANNING**.

12 'Derelict land functions' means functions under the Derelict Land Act 1982 s 1 or any enactment superseded by that section, but excluding the powers to make orders under s 1(5), (7) (see PARAS 972 text and note 11, 971 respectively): Housing and Regeneration Act 2008 s 27(2).

13 Housing and Regeneration Act 2008 s 27(1).

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Utilisation of Derelict Land/971. Derelict land clearance areas.

971. Derelict land clearance areas.

The Secretary of State¹ may by order² specify any locality in England³ as a derelict land clearance area⁴ if: (1) he is of the opinion that the economic situation in the locality is such that the making of the order would be particularly appropriate with a view to contributing to the development of industry in the locality⁵; or (2) the Treasury has consented to the making of the order⁶. The effect of an area being so specified is that it is then eligible for grants⁷ at the same level as those payable in relation to land in a development area⁸ or intermediate area⁹.

1 As to the Secretary of State see PARA 970 note 6.

2 Such an order must be made by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament: Derelict Land Act 1982 s 1(10). See PARLIAMENT vol 34 (Reissue) PARA 945. Localities must be specified by reference to areas created or existing for other purposes: s 1(10) (amended by the Industrial Development Act 1982 s 19(1), Sch 2 Pt II para 19 (applying s 1(4) of that Act); and the Co-operative Development Agency and Industrial Development Act 1984 s 5(2), Sch 1 Pt II para 3).

3 As to the extent of the Derelict Land Act 1982 see PARA 970 note 1.

4 Derelict Land Act 1982 s 1(7).

5 Derelict Land Act 1982 s 1(8)(a). See the Derelict Land Clearance Area Order 1984, SI 1984/778; and the Wakefield (Derelict Land Clearance Area) Order 1987, SI 1987/1653. These provisions replace similar provisions in the Local Employment Act 1972 s 8 (repealed) which in turn replaced the Local Employment Act 1970 s 3(1) (repealed). Under those Acts the following orders were made, which continue in force as if made under the Derelict Land Act 1982 s 1, by virtue of the Interpretation Act 1978 s 17(2)(b): the Derelict Land Clearance Areas Order 1970, SI 1970/309 (amended by SI 1972/421; and SI 1974/1372); the Derelict Land Clearance Areas Order 1978, SI 1978/691 (amended by SI 1979/334; and SI 1980/1890); the Derelict Land Clearance Areas Order 1980, SI 1980/1890; and the Derelict Land Clearance Areas Order 1982, SI 1982/935.

6 Derelict Land Act 1982 s 1(8)(b). See also note 5.

7 As to grants see PARA 972.

8 'Development area' means an area specified as such by an order made, or having effect as if made, under the Industrial Development Act 1982 s 1 (see PARA 937): Derelict Land Act 1982 s 1(11) (amended by the Industrial Development Act 1982 Sch 2 Pt II para 19). The current such order is the Assisted Areas Order 1993, SI 1993/1877 (amended by SI 1993/1894).

9 Derelict Land Act 1982 s 1(7). 'Intermediate area' means an area specified as such by such an order as is mentioned in note 8: s 1(11). As to such areas see PARA 938.

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972. Grants.

In England¹ the Secretary of State² may make grants to any person of such amounts and payable at such times and subject to such conditions as he may from time to time determine in respect of relevant expenditure³ incurred by that person with regard to derelict land⁴. Grants may be made in such manner as appears to the Secretary of State to be requisite⁵. Grants must not exceed the prescribed percentage⁶, depending on whether or not the land is situated in a development area⁷, an intermediate area⁸ or a derelict land clearance area⁹, and on whether the applicant is a local authority¹⁰ or other person¹¹. Similar, but separate, provision is made as to the prescribed percentage¹² where the land is not situated in any such area¹³. The fact that a locality ceases to be a development area, intermediate area or derelict land clearance area, or that an area ceases to be an area of outstanding natural beauty or comprised in a national park, does not affect the amount of grant which may be made provided that the relevant expenditure was approved by the Secretary of State before the time of the cessation¹⁴.

1 As to the extent of the Derelict Land Act 1982 see PARA 970 note 1.

2 As to the Secretary of State see PARA 970 note 6.

3 As to the meaning of 'relevant expenditure' see PARA 970 note 8.

4 Derelict Land Act 1982 s 1(1). As to the meaning of 'derelict land' see PARA 970. Before making any grant under s 1 where the land to which s 1(1) applies is in a national park or an area of outstanding natural beauty, the Secretary of State must consult Natural England: s 1(6A) (added by the Natural Environment and Rural Communities Act 2006 s 105(1), Sch 11 Pt 1 para 99). 'Area of outstanding natural beauty' means an area designated as such by an order made under the Countryside and Rights of Way Act 2000 s 82 (see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 658): Derelict Land Act 1982 s 1(11) (amended by the Countryside and Rights of Way Act 2000 s 93, Sch 15 Pt 1 para 6).

5 Derelict Land Act 1982 s 1(4).

6 Ie: (1) the prescribed percentage of the relevant expenditure; or (2) in the case of a periodical grant in respect of costs from time to time incurred or treated as incurred in respect of the borrowing of money to defray the relevant expenditure, the prescribed percentage of the costs so incurred or treated as so incurred: Derelict Land Act 1982 s 1(5)(a), (b). As to the amount of the prescribed percentage see note 11.

7 As to the meaning of 'development area' see PARA 971 note 8.

8 As to the meaning of 'intermediate area' see PARA 971 note 9.

9 The Derelict Land Act 1982 s 1(5) refers specifically only to development areas and intermediate areas, but, by virtue of s 1(7), where an area has been specified as a derelict land clearance area it is to be treated for grant purposes as if it were a development area or an intermediate area: see PARA 971.

10 As to the meaning of 'local authority' see PARA 970 note 3.

11 Derelict Land Act 1982 s 1(5). Where the land is situated in a development area, an intermediate area or a derelict land clearance area there is no limit to the amount of relevant expenditure which can be given by way of grant to a local authority, but in the case of any other person the prescribed percentage of relevant expenditure which may be given by grant is 80% or such other limit as may be so prescribed by order made by the Secretary of State with the consent of the Treasury: Derelict Land Act 1982 s 1(5) (definition of 'prescribed percentage' amended by the Leasehold Reform, Housing and Urban Development Act 1993 s 187(1), Sch 21 para 8). As to orders see PARA 971 note 2. Orders under the Derelict Land Act 1982 s 1(5) may make such transitional provision as appears necessary or expedient: s 1(10).

12 The prescribed percentage is described in terms similar to those set out in note 6: Derelict Land Act 1982 s 1(6)(a), (b). As to the amount of the prescribed percentage see note 13.

13 Derelict Land Act 1982 s 1(6). The prescribed percentage is: (1) where the land is in a national park or an area of outstanding natural beauty and the applicant is a local authority in whose area the land is situated, 75%; and (2) in any other case, 50%: s 1(6). As to the meaning of 'national park' see PARA 970 note 3.

14 Derelict Land Act 1982 s 1(9).

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PROMOTION OF TRADE AND ASSISTANCE TO INDUSTRY/(3) DEVELOPMENT COUNCIL
LEGISLATION/(i) Development Councils/973. Establishment and purpose of development
councils.

(3) DEVELOPMENT COUNCIL LEGISLATION

(i) Development Councils

973. Establishment and purpose of development councils.

A development council may be established for any industry by order¹ made by the Secretary of State² or the minister concerned (the 'appropriate minister')³. Before making such an order, the appropriate minister must consult any organisation appearing to him to be representative of substantial numbers of persons carrying on business in the industry and such organisations representative of persons employed in the industry as appear to him to be appropriate⁴. An order may not be made unless the appropriate minister is satisfied that the establishment of a development council for the industry is desired by a substantial number of the persons engaged in that industry⁵. The order may assign to the development council any or all of specified functions⁶ in order to increase efficiency or productivity in the industry, to improve or develop the service that it renders or could render to the community, or to enable it to render such service more economically⁷.

1 Industrial Organisation and Development Act 1947 s 1(1). A development council order must designate, in such manner as appears to the Secretary of State or minister concerned (see note 2) to be requisite for preventing uncertainty, the activities that are to be treated as constituting the industry for which the council is established, whether they are regarded for any other purposes as those of: (1) a single industry; (2) a group of industries; or (3) a section or sections of an industry or industries: s 14(1). An order amending such an order may provide that further activities so designated are to be treated as included in the industry for which the council is established, or that designated activities so treated are no longer to be so treated: s 14(2). Such an order must not be made until a draft has been approved by a resolution of each House of Parliament: s 1(6). See **PARLIAMENT** vol 34 (Reissue) PARA 944. An order may provide for any incidental or supplementary matters for which it appears to the Secretary of State or minister concerned necessary or expedient to provide: s 1(5). The expression 'the industry' where used in relation to a development council or to an order under s 9 (levies: see PARAS 981-983) is to be construed as referring to the industry that is for the time being that for which the council is established or in connection with which funds are to be made available, as the case may be: s 14(4).

2 The power to make such an order was originally conferred on the Board of Trade and several different ministers, collectively referred to as 'the board or minister concerned': Industrial Organisation and Development Act 1947 s 1(2) (as originally enacted). The power is now exercisable by the Board of Trade, the Secretary of State for Business, Innovation and Skills or the Secretary of State for Environment, Food and Rural Affairs: s 1(2) (amended by SI 1955/554; and SI 1971/719). The functions of the Minister of Agriculture, Fisheries and Food were transferred in so far as they were exercisable: (1) in relation to Wales, to the Secretary of State for Wales; (2) in relation to England and Wales, to that minister and that Secretary of State jointly; and (3) in relation to Great Britain, to that minister, the Secretary of State for Scotland and the Secretary of State for Wales jointly: Transfer of Functions (Wales) (No 1) Order 1978, SI 1978/272, art 9(1). Article 9(1) did not, however, apply to any function of the minister exercisable in relation to the Apple and Pear Development Council (now dissolved and replaced: see note 3): art 9(2). The powers of the Board of Trade are in practice exercisable by the Secretary of State for Business, Innovation and Skills, who is President of the Board of Trade: see PARA 802. The power to make a development council order relating to agriculture or fisheries and extending (but not applying solely) to Scotland was vested in the Minister of Agriculture, Fisheries and Food and the Secretary of State for Scotland jointly: Industrial Organisation and Development Act 1947 s 1(2) proviso (amended by SI 1955/554). The functions previously exercised jointly by the Secretary of State, the Secretary of State for Wales and the Secretary of State were transferred to the Minister of Agriculture, Fisheries and Food: see the Transfer of Functions (Agriculture and Food) Order 1999, SI 1999/3141. All functions of the Minister of Agriculture, Fisheries and Food are transferred to the Secretary of State for Environment, Food and Rural Affairs: see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. Since June 2001, the functions of that minister are now exercisable as part of the remit of the Department of Environment, Food and Rural Affairs: see *Delivering Effective Government* 10 Downing

Street press release, 8 June 2001. Functions of the Minister of Agriculture, Fisheries and Food, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 and are now exercisable by the Welsh Ministers: see PARA 802 note 21. As to the meaning of 'agriculture' see **AGRICULTURAL LAND** vol 1 (2008) PARA 324.

In this paragraph, and in PARAS 974-987, the expression 'the appropriate minister' is used to denote the person or persons who may exercise the power to make development council orders.

Administrative expenses incurred by any such authority in the execution of the Industrial Organisation and Development Act 1947 must be defrayed out of money provided by Parliament: s 12.

3 Industrial Organisation and Development Act 1947 s 1(1), (2) (s 1(2) as amended: see note 2). Formerly there were development councils for the clothing industry, the jewellery and silverware industry, the textile industry and the furniture industry, but these have all been dissolved. The Horticultural Development Council was established by the Horticultural Development Council Order 1986, SI 1986/1110 (revoked). The Apple and Pear Development Council was dissolved from 8 December 1989 by the Apple and Pear Development Council (Dissolution) Order 1989, SI 1989/2276, and a research council established (Apple and Pear Research Council Order 1989, SI 1989/2277), itself dissolved from 28 March 2003 (Apple and Pear Research Council (Dissolution) Order 2003, SI 2003/909). See also the Milk Development Council Order 1995, SI 1995/356 (revoked), establishing the Milk Development Council; and the Potato Industry Development Council Order 1997, SI 1997/266 (revoked), establishing the British Potato Council. The Horticultural Development Council, the British Potato Council and the Milk Development Council were dissolved, and the relevant subordinate legislation was revoked, from 1 April 2008 by the Agriculture and Horticulture Development Board Order 2008, SI 2008/576 (see arts 1(3), 17(1)(a), (e), 18, Sch 5 para 8), made under the Natural Environment and Rural Communities Act 2006. They and other bodies are replaced by a new body, the Agriculture and Horticulture Development Board. See **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 1143.

4 Industrial Organisation and Development Act 1947 s 1(3).

5 Industrial Organisation and Development Act 1947 s 1(4). The persons engaged in the industry are both employers and employees, and they are not to be considered separately when assessing the degree of support for a council: *Thorneloe and Clarkson Ltd v Board of Trade* [1950] 2 All ER 245, 66 (pt 1) TLR 1117.

6 The Industrial Organisation and Development Act 1947 s 1(1), Sch 1 sets out the following functions:

79 (1) promoting:

- 5 5. (a) the production and marketing of standard products (Sch 1 para 5);
- 6 6. (b) the better definition of trade descriptions and consistency in their use (Sch 1 para 6);
- 7 7. (c) the training of persons engaged or proposing engagement in the industry, and their education in relevant technical or artistic subjects (Sch 1 para 8);
- 8 8. (d) the adoption of measures for securing safer and better working conditions, and the provision and improvement of amenities for employees, and promoting or undertaking inquiry into such measures (Sch 1 para 9);
- 9 9. (e) arrangements for co-operative organisations for supplying materials and equipment, for co-ordinating production, and for marketing and distributing products (Sch 1 para 14);

- 10 10. (f) the development of export trade, including promoting or undertaking arrangements for publicity overseas (Sch 1 para 15);

- 11 11. (g) the improvement of accounting and costing practice and uniformity therein, including in particular the formulation of standard castings (Sch 1 para 17);

80 (2) undertaking:

- 12 12. (a) the certification of products, the registration of certification trade marks, and the functions of proprietors of such marks (Sch 1 para 7);

13. (b) arrangements for making available information obtained, and for advising, on matters with which the council is concerned in the exercise of any of its functions (Sch 1 para 20);
 13
- 81 (3) promoting or undertaking:
14. (a) scientific research (Sch 1 para 1);
 14
15. (b) inquiry as to materials and equipment and as to methods of production, management and labour utilisation, including the discovery and development of new materials, equipment and methods and of improvements in those already in use, the assessment of the advantages of different alternatives, and the conduct of experimental establishments and of tests on a commercial scale (Sch 1 para 2);
 15
16. (c) research into matters affecting industrial psychology (Sch 1 para 3);
 16
17. (d) measures for the improvement of design, including promoting or undertaking the establishment and operation of design centres (Sch 1 para 4);
 17
18. (e) research into the incidence, prevention and cure of industrial diseases (Sch 1 para 10);
 18
19. (f) arrangements for encouraging entry into the industry (Sch 1 para 11);
 19
20. (g) research for improving arrangements for marketing and distributing products (Sch 1 para 12);
 20
21. (h) research into matters relating to the consumption or use of goods and services supplied by the industry (Sch 1 para 13);
 21
22. (i) arrangements for better acquainting the public in the United Kingdom with the goods and services supplied by the industry and methods of using them (Sch 1 para 16);
 22
23. (j) the collection and formulation of statistics (Sch 1 para 18);
 23
- 82 (4) advising on any matters relating to the industry (other than remuneration or conditions of employment) as to which the appropriate minister may request it to advise, and undertaking inquiry for the purpose of enabling it to do so (Sch 1 para 19).

⁷ Industrial Organisation and Development Act 1947 s 1(1). For limitations under European Union law on a development council's functions, see Case 222/82 *Apple and Pear Development Council v KJ Lewis Ltd* [1983] ECR 4083, [1983] 3 CMLR 733, ECJ.

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PROMOTION OF TRADE AND ASSISTANCE TO INDUSTRY/(3) DEVELOPMENT COUNCIL
LEGISLATION/(i) Development Councils/974. Constitution and membership of development councils.

974. Constitution and membership of development councils.

A development council is a body corporate, and is to be known by the name specified in the development council order¹. Its members are appointed by the appropriate minister², and must be persons of the following categories: (1) persons capable of representing the interests of persons carrying on business in the industry³; (2) persons capable of representing the interests of persons employed in the industry⁴; (3) independent members⁵; and (4) where it appears to the appropriate minister to be expedient, persons having special knowledge of matters relating to the marketing or distribution of products of the industry⁶.

The development council order must specify the number or a maximum or minimum number of persons in these respective categories, and ensure that the members under heads (1) and (2) above constitute a majority of members of the council⁷. Before appointing the members under heads (1) and (2) above, the appropriate minister must consult such organisations as are required to be consulted⁸ before the establishment of a development council⁹. A development council must have a chairman, who must be one of the independent members and be appointed by the appropriate minister, who may also appoint another member as deputy chairman¹⁰.

A development council order may specify requirements as to appointment, tenure and vacation of office and as to qualification or disqualification for membership¹¹. It may also provide for the payment to members of such remuneration and allowances¹² as may be determined by the appropriate minister, and for the payment on the retirement or death of any member as to whom it may be so determined, of such pensions or gratuities¹³ to them or others by reference to their service as may be so determined¹⁴.

1 Industrial Organisation and Development Act 1947 s 2(1). A development council has a common seal: s 2(9), Sch 2 para 1. As to development council orders see PARA 973.

2 Industrial Organisation and Development Act 1947 s 2(2). As to the appropriate minister see PARA 973 note 2.

3 Industrial Organisation and Development Act 1947 s 2(3)(a).

4 Industrial Organisation and Development Act 1947 s 2(3)(b).

5 Industrial Organisation and Development Act 1947 s 2(3)(c). Independent members are persons as to whom the appropriate minister is satisfied that they have no such financial or industrial interest as is likely to affect them in the discharge of their functions: s 2(3)(c).

6 Industrial Organisation and Development Act 1947 s 2(3).

7 Industrial Organisation and Development Act 1947 s 2(4).

8 See PARA 973 text and note 4.

9 Industrial Organisation and Development Act 1947 s 2(6).

10 Industrial Organisation and Development Act 1947 s 2(7).

11 Industrial Organisation and Development Act 1947 s 2(5). Members of a development council are disqualified for membership of the House of Commons: see the House of Commons Disqualification Act 1975 s 1(1)(f), Sch 1 Pt II; and PARLIAMENT vol 78 (2010) PARA 908.

12 The remuneration and allowances are to be paid out of the money of the council: Industrial Organisation and Development Act 1947 Sch 2 para 5.

13 The pensions or gratuities are to be paid by the appropriate minister: Industrial Organisation and Development Act 1947 Sch 2 para 6(a).

14 Industrial Organisation and Development Act 1947 s 2(8).

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LEGISLATION/(i) Development Councils/975. Acts and proceedings, contracts and staff.

975. Acts and proceedings, contracts and staff.

A development council order¹ may make provision with respect to: (1) the quorum, proceedings, meetings and determinations of the council; (2) council accounts and audits of the accounts; and (3) the execution of instruments and the mode of entering into contracts by and on behalf of the council and the proof of documents purporting to be executed, issued or signed by the council or a member, officer or servant of the council². Subject to the provisions of the order establishing it, a development council may regulate its own proceedings³. It may appoint such officers, agents and servants on such terms as to remuneration⁴ and other matters as it may determine, and there may be paid, on the death or retirement of any of them as to whom the council may so determine, such pensions or gratuities⁵ to them or others by reference to their service as the council may determine⁶.

1 As to the making of development council orders see PARA 973.

2 Industrial Organisation and Development Act 1947 s 2(9), Sch 2 para 2.

3 Industrial Organisation and Development Act 1947 Sch 2 para 3.

4 The remuneration is to be paid out of the money of the council: Industrial Organisation and Development Act 1947 Sch 2 para 5.

5 These pensions and gratuities are to be paid either wholly by the council or partly by the council and partly by means of contributions: Industrial Organisation and Development Act 1947 Sch 2 para 6.

6 Industrial Organisation and Development Act 1947 Sch 2 para 4.

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PROMOTION OF TRADE AND ASSISTANCE TO INDUSTRY/(3) DEVELOPMENT COUNCIL
LEGISLATION/(i) Development Councils/976. Registration, returns and information.

976. Registration, returns and information.

A development council order¹ may secure that persons carrying on business in the industry are to be registered by the development council in a register in which any person claiming to be a person so carrying on business is to be entitled as of right to be or remain registered, subject to any provisions of the order as to notification to the council of such claims². Further, the order may enable the council to require persons carrying on business in the industry to furnish such returns and other information³ as appears to the council to be required for the exercise of any of its functions⁴. In order to exercise these powers generally as regards the industry or any section of it, the council must have the previous consent of the appropriate minister⁵ and his approval of the form in which the returns or other information are required to be furnished⁶.

1 As to the making of development council orders see PARA 973.

2 Industrial Organisation and Development Act 1947 s 3(1). The register must be kept by the development council and must be open to public inspection at all convenient hours on payment of such reasonable fee, if any, and subject to such conditions, if any, as may be specified in the order: s 3(1). As to the meaning of 'the industry' see PARA 973 note 1.

3 This includes information with respect to the productive capacity, capital assets, staff, output, orders, sales, deliveries, stocks and costs of any business: Industrial Organisation and Development Act 1947 s 3(2).

4 Industrial Organisation and Development Act 1947 s 3(2).

5 As to the appropriate minister see PARA 973 note 2.

6 Industrial Organisation and Development Act 1947 s 3(2) proviso.

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LEGISLATION/(i) Development Councils/977. Reports and accounts.

977. Reports and accounts.

A development council must prepare and transmit to the appropriate minister¹ annually a report setting out what has been done in the discharge of its functions during the financial year last completed², including a statement of the council's accounts for that year, together with any report made by the auditors or, as the case may be, the Comptroller and Auditor General, on those accounts³. The statement of accounts must be in the form directed by the appropriate minister, being a form conforming with the best commercial standards, and must show the total remuneration and allowances paid during the year to members of the council⁴. A copy of any report prepared by a council, or made by the auditors on its accounts or by the Comptroller and Auditor General on its statement of accounts, must be laid before Parliament by the appropriate minister⁵.

1 As to the appropriate minister see PARA 973 note 2.

2 Industrial Organisation and Development Act 1947 s 7(1). 'Financial year' means the 12 months ending with 31 March: Interpretation Act 1978 s 5, Sch 1.

3 Industrial Organisation and Development Act 1947 s 7(2) (amended by SI 2003/1326). The report must be transmitted as soon as the accounts for that financial year have been audited: Industrial Organisation and Development Act 1947 s 7(2). A person must not be appointed to audit a council's accounts unless he is eligible for appointment as a statutory auditor under the Companies Act 2006 Pt 42 (ss 1209-1264) (see COMPANIES vol 15 (2009) PARA 958): Industrial Organisation and Development Act 1947 s 7(2A) (added by SI 1991/1997; and amended by SI 2008/948). As to the office of Comptroller and Auditor General see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 724-726.

The Industrial Organisation and Development Act 1947 s 7(2A) does not apply to: (1) accounts of the British Potato Council for financial years ending on or after 30 June 2004; or (2) accounts of the Horticultural Development Council or of the Milk Development Council for financial years ending on or after 31 March 2004: s 7(2B) (s 7(2B), (3A)-(3C) added by SI 2003/1326). The British Potato Council must send a copy of its statement of accounts in respect of each financial year ending on or after 30 June 2004 to the Comptroller and Auditor General as soon as reasonably practicable after the end of the financial year to which the statement relates: Industrial Organisation and Development Act 1947 s 7(3A) (as so added). The Horticultural Development Council and the Milk Development Council must send a copy of their statement of accounts in respect of each financial year ending on or after 31 March 2004 to the Comptroller and Auditor General as soon as reasonably practicable after the end of the financial year to which the statement relates: s 7(3B) (as so added). The Comptroller and Auditor General must examine, certify and report on each statement received under s 7(3A) or (3B): s 7(3C) (as so added). As to the British Potato Council, the Horticultural Development Council and the Milk Development Council and their dissolution see PARA 973 note 3.

4 Industrial Organisation and Development Act 1947 s 7(3).

5 Industrial Organisation and Development Act 1947 s 7(4) (amended by SI 2003/1326).

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PROMOTION OF TRADE AND ASSISTANCE TO INDUSTRY/(3) DEVELOPMENT COUNCIL
LEGISLATION/(i) Development Councils/978. Continuance and dissolution of development
councils; amendment of development council orders.

**978. Continuance and dissolution of development councils; amendment of
development council orders.**

At a date not later than the expiration of three years from the coming into effect of a development council order¹ and at five-yearly intervals while the council continues in being after that date, the appropriate minister² must consult the council and such organisations as must be consulted in the setting up of the council³ on the question whether the council should continue in being, and if so whether the development council order should be amended in any respect⁴.

An order for the amendment of a development council order (whether as originally made or as previously so amended), or for the dissolution of a development council, may be made by the appropriate minister after consultation with the council and subject to the like provisions as to consultation⁵ and approval by Parliament⁶ as apply to the making of a development council order⁷. At the request of the council, an amending order may assign to the council functions⁸ which it appears to the appropriate minister expedient for the council to exercise for any of its purposes⁹.

1 As to the making of development council orders see PARA 973.

2 As to the appropriate minister see PARA 973 note 2.

3 As to the obligation to consult certain organisations before setting up a council see PARA 973 text and note 4.

4 Industrial Organisation and Development Act 1947 s 8(3). As to the power of amendment see s 8(1)(a), (2); text and notes 5-9; and PARA 973 note 1. As to amending orders made under s 8 see PARA 973 note 3.

5 See PARA 973.

6 See PARA 973 note 1.

7 Industrial Organisation and Development Act 1947 s 8(1). An order for the dissolution of a development council must make provision: (1) for the winding up of the council, the imposition and recovery of charges under s 4 (see PARA 979) if necessary to meet the liabilities and the cost of the winding up, and the application of any excess assets for specified purposes connected with the industry; and (2) for the revocation of the development council order either with or without savings: s 8(4). See eg the Apple and Pear Development Council (Dissolution) Order 1989, SI 1989/2276.

8 The functions of a kind similar to those specified in the Industrial Organisation and Development Act 1947 s 1(1), Sch 1 (see PARA 973 note 6), or such as appear to the appropriate minister to be capable of being conveniently exercised in association with functions of such a kind which have been, or are to be, assigned to the council: s 8(2). However, functions assigned under s 8(2) may not include functions relating to remuneration or conditions of employment: s 8(2) proviso.

9 Industrial Organisation and Development Act 1947 s 8(2). As to the purposes referred to see s 1(1); and PARA 973 text and note 7.

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 LEGISLATION/(ii) Levies/A. LEVIES UNDER DEVELOPMENT COUNCIL ORDERS/979. Charges
 imposed by development council orders.

(ii) Levies

A. LEVIES UNDER DEVELOPMENT COUNCIL ORDERS

979. Charges imposed by development council orders.

A development council order¹ may provide for the imposition by the development council, with the approval of the appropriate minister², and for the recovery by the council (in such manner and through such channels, if any, as may be specified in the order), of limited charges³ for enabling the council to meet its expenses, to be made on and recovered from persons carrying on business in the industry or on persons carrying on any business consisting wholly or partly in the production of, or dealing in, any materials of the industry⁴.

1 As to the power to make development council orders see PARA 973.

2 As to the appropriate minister see PARA 973 note 2.

3 The order must either provide that the charges be computed so as not to yield more than a specified amount during a specified period, or provide that they are not to be levied at more than specified maximum rates: Industrial Organisation and Development Act 1947 s 4(2).

An order relating to agriculture providing for such charges may contain provision: (1) authorising such of the persons on whom the charges are imposed as may be specified in the order to recover all or part of the charges imposed on them from such other persons carrying on business in the industry as may be so specified; and (2) authorising the deduction from the charges payable by the persons with such a right of recovery, or the repayment to them, of: (a) such amounts as may be determined by or under the order in respect of expenses incurred by them in exercising that right; and (b) any sums which are, in accordance with provision made by or under that order, to be treated as irrecoverable: s 4(2A) (added for this purpose by the Agriculture Act 1993 s 60(1), (3)). 'Agriculture' has the same meaning as in the Agriculture Act 1947 (see **AGRICULTURAL LAND** vol 1 (2008) PARA 324), and 'agricultural' is to be construed accordingly: Agriculture Act 1993 s 60(6). A development council order is to be taken to relate to agriculture if any of the activities that are to be treated as constituting the industry to which the order relates is an agricultural activity: s 60(5). As to the meaning of 'the industry' see PARA 973 note 1.

Before making the order, the appropriate minister must satisfy himself that the incidence of charges (taking into account, in the case of an order relating to agriculture, any provision made under the Industrial Organisation and Development Act 1947 s 4(2A)) as between different classes of undertakings in the industry will be in accordance with a fair principle: s 4(3) (modified in relation to orders relating to agriculture by the Agriculture Act 1993 s 60(4)). However, there is no elaboration in the statute on the phrase 'fair principle'.

4 Industrial Organisation and Development Act 1947 s 4(1) (modified in relation to orders relating to agriculture by the Agriculture Act 1993 s 60(2)).

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LEGISLATION/(ii) Levies/A. LEVIES UNDER DEVELOPMENT COUNCIL ORDERS/980. Returns and
information.

980. Returns and information.

So far as it may appear to the appropriate minister¹ reasonably requisite for the purposes of the imposition or recovery of the charges imposed by a development council order², the order may empower the council to require persons carrying on business in the industry, or any business consisting wholly or partly in the production of or dealing in any materials of the industry, to furnish returns and other information, to keep records and to produce for examination on behalf of the council such records as well as books and other documents in the custody or under the control of such persons³.

1 As to the appropriate minister see PARA 973 note 2.

2 As to the making of development council orders see PARA 973. As to the imposition and recovery of charges see PARA 979.

3 Industrial Organisation and Development Act 1947 s 4(4).

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LEGISLATION/(ii) Levies/B. INDUSTRIES WITHOUT DEVELOPMENT COUNCILS/981. Charges
where there is no development council.

B. INDUSTRIES WITHOUT DEVELOPMENT COUNCILS

981. Charges where there is no development council.

If it appears to any of the authorities having power to set up a development council¹ to be expedient that funds should be made available for the purposes of: (1) scientific research; (2) promotion of export trade; or (3) improvement of design in connection with an industry for which there is neither a development council nor a relevant board², and that a body capable of carrying out that purpose satisfactorily either exists or is to be brought into being, the authority may, after such consultation as would be required prior to the making of a development council order for the industry³, make an order providing for the imposition of charges on, and recovery from, categories of persons in relation to the industry corresponding to those who under a development council order may be liable to pay charges in connection with an industry which has a development council⁴. The order may empower the authority to require persons to furnish returns and information, to keep records and produce documents to the appropriate minister⁵ in the same manner as a council may be empowered so to do under a development council order⁶. Any order imposing those charges may be amended or revoked by a further order of the authority making the original order⁷.

1 See PARA 973 note 2.

2 'Relevant board' means a board established under the Natural Environment and Rural Communities Act 2006 Pt 8 Ch 2 (ss 87-97) (see **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARAS 1315-1319); Industrial Organisation and Development Act 1947 s 9(1A) (added by the Natural Environment and Rural Communities Act 2006 s 105(1), Sch 11 Pt 1 para 5(1), (3)).

3 Industrial Organisation and Development Act 1947 s 9(8). As to the organisations to be consulted see PARA 973 text and note 4. As to the meaning of 'the industry' see PARA 973 note 1.

4 Industrial Organisation and Development Act 1947 s 9(1) (amended by the Natural Environment and Rural Communities Act 2006 Sch 11 Pt 1 para 5(2)). As to the categories of persons referred to see PARA 979. Before making an order, the appropriate minister must be satisfied that the incidence of the charges as between different classes of undertakings in the industry will be in accordance with a fair principle: Industrial Organisation and Development Act 1947 s 9(2). An order under s 9 must specify a public fund or account into which sums recovered in respect of such charges must be paid, and sums so recovered are issued from that fund or account to the body in question to meet its expenses: s 9(3). An order may not be made unless a draft has been approved by resolution of each House of Parliament: s 9(9). See **PARLIAMENT** vol 34 (Reissue) PARA 944. An order was formerly in force for the promotion of export trade by the National Wool Textile Export Corporation: see the Wool Textile Industry (Export Promotion Levy) Order 1970, SI 1970/348 (amended by SI 1971/880; and SI 1982/485), but this was revoked by the Wool Textile Industry (Export Promotion Levy) (Revocation) Order 2008, SI 2008/2932. The Industrial Organisation and Development Act 1947 s 14(1), (2) (see PARA 973 note 1) applies to orders under s 9: s 14(3).

5 As to the appropriate minister see PARA 973 note 2. The functions under the Industrial Organisation and Development Act 1947 s 9 are to be exercisable by a minister of the Crown and the Scottish ministers: Scotland Act 1998 ss 44(2), 56(1)(c).

6 Industrial Organisation and Development Act 1947 s 9(6), applying s 4(4) and s 6 in relation to s 4(4); see PARAS 980, 987.

7 Industrial Organisation and Development Act 1947 s 9(7).

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 LEGISLATION/(ii) Levies/B. INDUSTRIES WITHOUT DEVELOPMENT COUNCILS/982. Reports and accounts.

982. Reports and accounts.

A body to which sums for the purposes of scientific research, promotion of export trade or improvement of design are issued¹ must prepare annually a statement² of its accounts for its financial year last completed and transmit it to the authority making the order³ together with a copy of any report made by auditors on the accounts⁴. The authority must lay before Parliament a copy of each such statement and of any such report⁵. As respects each financial year, the authority making the order must prepare an account⁶ of sums recovered under the order and of their disposal by the authority, and the account must be transmitted, on or before 30 November after the end of the financial year in question, to the Comptroller and Auditor General⁷ who, after examining and certifying the account, must lay copies of it, together with his report on it, before Parliament⁸.

1 Ie an industrial body (having no development council) which is in receipt of sums under the Industrial Organisation and Development Act 1947 s 9: see PARA 981.

2 The statement must be in such form as the authority making the order (as to which see PARA 981) may direct: Industrial Organisation and Development Act 1947 s 9(5).

3 Ie the order under Industrial Organisation and Development Act 1947 s 9.

4 Industrial Organisation and Development Act 1947 s 9(5). As to the meaning of 'financial year' see PARA 977 note 2.

5 Industrial Organisation and Development Act 1947 s 9(5).

6 The account must be prepared in such form and manner as the Treasury may direct: Industrial Organisation and Development Act 1947 s 9(4).

7 As to the office of Comptroller and Auditor General see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 724-726. In relation to Wales, functions of the Comptroller and Auditor General under the Industrial Organisation and Development Act 1947 s 9(4) have been transferred to the Auditor General for Wales: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(g), Sch 1.

8 Industrial Organisation and Development Act 1947 s 9(4).

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PROMOTION OF TRADE AND ASSISTANCE TO INDUSTRY/(3) DEVELOPMENT COUNCIL
LEGISLATION/(ii) Levies/B. INDUSTRIES WITHOUT DEVELOPMENT COUNCILS/983. Excess in
funds after revocation of orders.

983. Excess in funds after revocation of orders.

Where, after the revocation of an order applying to an industry for which there is no development council¹, there exists an excess of sums recovered under the order over the amount issued, sums not exceeding in aggregate the amount of that excess may be paid, out of the public fund or account into which the sums recovered were paid, to:

- 265 (1) any development council there may be in being for an industry comprising the whole or a substantial part of the industry in relation to which the order was made²; or
- 266 (2) if there is no such council, but the authority³ is satisfied that there exists or is to be brought into being a body which is capable of carrying out satisfactorily purposes in connection with the industry in relation to which the order was made for which the authority considers it expedient that funds should be made available, to that body but subject to such provision for securing the disposal of the sums for such purposes as it appears to the authority to be practicable and expedient to make⁴.

1 See PARA 981.

2 Industrial Organisation and Development Act 1947 s 9(10)(a). This is now unlikely to be the case: see PARA 973 note 3.

3 Ie the authority making the levy order under the Industrial Organisation and Development Act 1947 s 9: see PARA 981.

4 Industrial Organisation and Development Act 1947 s 9(10)(b).

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PROMOTION OF TRADE AND ASSISTANCE TO INDUSTRY/(3) DEVELOPMENT COUNCIL
LEGISLATION/(iii) Restriction and Enforcement/984. Information to be given to independent members.

(iii) Restriction and Enforcement

984. Information to be given to independent members.

If a development council order¹ imposes any requirement to furnish returns or other information relating to an individual business or to produce for examination books or other documents or records², it must provide that the returns or information are to be furnished to, or the examination done by, independent members of the council³, or to or by officers of the council specially authorised in that behalf⁴.

- 1 As to the power to make development council orders see PARA 973.
- 2 For the power to impose such requirements see PARAS 976, 980.
- 3 As to the independent members of a development council see PARA 974 note 5. The order may designate certain independent members only: Industrial Organisation and Development Act 1947 s 5(1).
- 4 Industrial Organisation and Development Act 1947 s 5(1).

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PROMOTION OF TRADE AND ASSISTANCE TO INDUSTRY/(3) DEVELOPMENT COUNCIL
LEGISLATION/(iii) Restriction and Enforcement/985. Information regarding secret processes.

985. Information regarding secret processes.

A development council order¹ must make provision for ensuring that if a person required to furnish returns or information or to produce documents² claims to use a secret process in his business that ought not to be disclosed on the ground of risk or prejudice to his business, that person will not be subject to any liability for withholding disclosure of any particulars relating to the process unless, after considering the claim, the appropriate minister³ has approved the form of the requirement and the making of it in that form⁴.

- 1 As to the power to make development council orders see PARA 973.
- 2 As to the power to make such requirements see PARAS 976, 980.
- 3 As to the appropriate minister see PARA 973 note 2.
- 4 Industrial Organisation and Development Act 1947 s 5(4).

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 PROMOTION OF TRADE AND ASSISTANCE TO INDUSTRY/(3) DEVELOPMENT COUNCIL
 LEGISLATION/(iii) Restriction and Enforcement/986. Restriction on disclosure of information.

986. Restriction on disclosure of information.

With certain exceptions¹, returns or information duly furnished or information duly obtained² on an examination must not, without the consent of the person carrying on the business to which the returns, information, books, or other documents or records relate, be disclosed except to specified persons³, or in the form of a summary of similar returns or information furnished by or obtained from a number of persons and so framed as not to enable particulars relating to any individual business to be ascertained from it⁴, unless such disclosure is made for the purpose of any legal proceedings⁵ pursuant to the Industrial Organisation and Development Act 1947 or of any report of such proceedings⁶. Disclosure of information in contravention of this provision is an offence⁷.

1 The Industrial Organisation and Development Act 1947 s 5(2), (3) does not apply to disclosure: (1) by a development council established in relation to an industry whose activities include an agricultural activity; (2) to, or to an officer of, Natural England; (3) to, or to an officer of, the Commission for Rural Communities; (4) to, or to an officer of, the Joint Nature Conservation Committee; (5) to, or to an officer of, a body specified in the Natural Environment and Rural Communities Act 2006 Sch 7; (6) to, or to an officer of, a board established under Pt 8 Ch 2 (ss 87-97): Industrial Organisation and Development Act 1947 s 5(3A) (added by the Natural Environment and Rural Communities Act 2006 s 105(1), Sch 11 Pt 1 para 4).

2 Ie subject to provision in the development council order under the Industrial Organisation and Development Act 1947 s 5(1): see PARA 984. As to the power to require information etc see PARAS 976, 980.

3 Ie: (1) independent members of the development council (as to whom see PARA 974 note 5), or such of them as are designated under the order to carry out examinations or receive information (see PARA 984), or authorised officers of the council (Industrial Organisation and Development Act 1947 s 5(2)(b)); (2) the appropriate minister (see PARA 973 note 2) or one of his officers (s 5(2)(c)); (3) the appropriate minister or one of his officers in connection with the execution or for the purposes of the Statistics of Trade Act 1947 (see PARA 1009) (Industrial Organisation and Development Act 1947 s 5(2)(d)).

4 Industrial Organisation and Development Act 1947 s 5(2)(a).

5 'Legal proceedings' includes civil or criminal proceedings and arbitrations: Industrial Organisation and Development Act 1947 s 5(2) proviso.

6 Industrial Organisation and Development Act 1947 s 5(2) proviso.

7 Industrial Organisation and Development Act 1947 s 5(3). An offender is liable, on summary conviction, to imprisonment for a term not exceeding three months or a fine not exceeding the prescribed sum or both, or, on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both: s 5(3) (amended by virtue of the Criminal Law Act 1977 s 32(1); and the Magistrates' Courts Act 1980 s 32(2)). As to the prescribed sum see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 141.

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PROMOTION OF TRADE AND ASSISTANCE TO INDUSTRY/(3) DEVELOPMENT COUNCIL
LEGISLATION/(iii) Restriction and Enforcement/987. Enforcement.

987. Enforcement.

A development council order¹ may provide for the enforcement of its provisions² as to the registration of persons carrying on business in the industry, the furnishing of returns or other information, and the production or examination of books or other documents or records or the keeping of records³. An order providing for levies for an industry having no development council⁴ may make similar provision for the enforcement of those provisions of the order which require records to be kept, returns to be furnished and books and records to be produced for examination in connection with the imposition or recovery of charges⁵.

1 As to the power to make development council orders see PARA 973.

2 As to provisions requiring persons to maintain a register and to furnish information and returns see PARAS 976, 980.

3 Industrial Organisation and Development Act 1947 s 6. The order may provide for the imposition of time limits for the satisfaction of obligations, with or without power to the development council or other specified authority to extend limits imposed: s 6. No punishment provided may exceed those provided by s 5(3) (see PARA 986 note 7) or, in the case of a fine for a continuing offence, £5 per day: s 6 proviso.

4 As to the imposition of charges where there is no development council see PARA 981.

5 Industrial Organisation and Development Act 1947 s 9(6), applying s 6. The same provisions as to maximum punishments apply: see note 3.

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(4) REGIONAL DEVELOPMENT AGENCIES

988. Regional development agencies: general.

The Regional Development Agencies Act 1998 establishes regional development agencies for each of nine regions in England¹. Each regional development agency is a body corporate and is to be known by the name of the region for which it is established with the addition of the words 'Development Agency'². Each agency must consist of not less than eight nor more than 15 members appointed by the Secretary of State³. In appointing a person to be a member of an agency the Secretary of State must have regard to the desirability of appointing a person who has experience of, and has shown capacity in, some matter relevant to the functions of the agency⁴. Before appointing a person to be a member of an agency, the Secretary of State must consult: (1) such persons as appear to him to represent local authorities whose areas fall to any extent within the agency's area; (2) such persons as appear to him to represent employers in the agency's area; (3) such persons as appear to him to represent employees in the agency's area; (4) such persons as appear to him to represent the interests of those who live, work or carry on business in rural parts of the agency's area; and (5) such other persons as he considers appropriate⁵. The Secretary of State must designate one of the members of an agency as the chairman, and may designate another member as the deputy chairman⁶. Further provision is made concerning the constitution of such an agency⁷.

A regional development agency is not to be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown and its property is not to be regarded as the property of, or property held on behalf of, the Crown⁸. Such an agency is subject to investigation by the Parliamentary Commissioner for Administration⁹. Members of regional development agencies are disqualified absolutely from membership of the House of Commons¹⁰. The records of regional development agencies are public records¹¹.

1 Regional Development Agencies Act 1998 s 1(1). The nine regions are the East Midlands, Eastern, London, North East, North West, South East, South West, West Midlands and Yorkshire and the Humber: Sch 1, which also specifies all the counties, metropolitan and non-metropolitan districts comprised in each region. References in Sch 1 to a local government or administrative area are to that area as it is for the time being: s 1(3). Subject to conditions, and in accordance with the specified procedure, the Secretary of State may by order make alterations in the extent of the regions in Sch 1: see further s 25 (amended by the Greater London Authority Act 1999 s 309, Sch 25 para 14).

2 Regional Development Agencies Act 1998 s 1(2). Provision is made in relation to the change of agencies' names: see further s 26 (amended by the Greater London Authority Act 1999 Sch 25 para 15).

3 Regional Development Agencies Act 1998 s 2(1).

4 Regional Development Agencies Act 1998 s 2(2). As to the functions of regional development agencies see PARA 989.

5 Regional Development Agencies Act 1998 s 2(3). Head (4) in the text does not apply in relation to the London Development Agency: s 2(6) (added by the Greater London Authority Act 1999 s 304). 'London Development Agency' means the regional development agency established for the London region: Regional Development Agencies Act 1998 s 41 (amended by the Greater London Authority Act 1999 Sch 25 para 19). As to local government areas generally see LOCAL GOVERNMENT vol 69 (2009) PARA 22 et seq.

6 Regional Development Agencies Act 1998 s 2(4).

Section 2(1)-(4), apart from s 2(3)(d) (see head (4) in the text), has effect in relation to the London Development Agency: (1) as if references to the Secretary of State were references to the Mayor of London; and (2) subject to s 2(8)-(11): s 2(7) (s 2(7)-(11) added by the Greater London Authority Act 1999 s 304). As to the Mayor of London see **LONDON GOVERNMENT**. The Mayor of London must also consult the London Assembly before making an appointment under the Regional Development Agencies Act 1998: s 2(8) (as so added). As to the London Assembly see **LONDON GOVERNMENT**. The Mayor of London may only make an appointment under s 2(1) if, after the appointment takes effect, there will be at least four members of the London Development Agency who are, or were at the time of their appointment, elected members of: (a) the London Assembly; (b) a London borough council; or (c) the Common Council of the City of London: s 2(9) (as so added). The Mayor of London may only make an appointment under s 2(1) if, after the appointment takes effect, at least half of the members of the London Development Agency will be persons who appear to the Mayor to be persons who have experience of running a business: s 2(10) (as so added). The Mayor of London may only designate a person under s 2(4)(a) to be the chairman of the London Development Agency if that person appears to the Mayor to be a person who has experience of running a business: s 2(11) (as so added). Section 2 is temporarily subject to Sch 2A (which makes transitional provisions for the purposes of the London Development Agency): s 2(12) (added by SI 2000/1174).

7 See the Regional Development Agencies Act 1998 s 2(5), Sch 2 (Sch 2 amended by the Greater London Authority Act 1999 s 309, Sch 25 para 20; the Greater London Authority Act 2007 s 20; the Planning Act 2008 s 179(2), (6); and the Local Democracy, Economic Development and Construction Act 2009 s 146(1), Sch 7 Pt 4), which is concerned with such matters as membership of an agency, the chairman and deputy chairman, remuneration and pensions, officers and staff appointed by an agency, regulation by an agency of its own procedures (including quorum), delegation of functions, members' interests, vacancies and defective appointments, the keeping of minutes, the execution of instruments by an agency and the proving of such instruments.

8 Regional Development Agencies Act 1998 s 3.

9 Parliamentary Commissioner Act 1967 s 4(1), Sch 2 (s 4(1) substituted by the Parliamentary and Health Service Commissioners Act 1987 s 1(1); Parliamentary Commissioner Act 1967 Sch 4 substituted by SI 2008/3115).

10 House of Commons Disqualification Act 1975 s 1(1)(f), Sch 1 Pt II (amended by the Regional Development Agencies Act 1998 Sch 7 para 4).

11 *I*e for the purposes of the Public Records Act 1958: see s 10, Sch 1 para 3 Table Pt II (amended by the Regional Development Agencies Act 1998 Sch 7 para 1). Furthermore, for the purpose of the Local Authorities (Goods and Services) Act 1970, except s 2(2), a regional development agency amounts to both a 'local authority' and a 'public body' (see further **LOCAL GOVERNMENT** vol 69 (2009) PARA 495): Regional Development Agencies Act 1998 Sch 7 para 3.

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989. Purposes and powers of regional development agencies.

A regional development agency has the following purposes: (1) to further the economic development and the regeneration of its area; (2) to promote business efficiency, investment and competitiveness in its area; (3) to promote employment in its area; (4) to enhance the development and application of skills relevant to employment in its area; and (5) to contribute to the achievement of sustainable development in the United Kingdom where it is relevant to its area to do so¹. Moreover, such an agency's purposes apply as much in relation to the rural parts of its area as in relation to the non-rural parts of its area².

Subject to certain provisions³, an agency may do anything which it considers expedient for its purposes, or for purposes incidental thereto⁴. However, it may only: (a) give financial assistance; (b) dispose of land for less than the best consideration which can reasonably be obtained; or (c) form, or acquire an interest in, a body corporate, if the Secretary of State consents⁵. Furthermore, an agency may only provide housing by acquiring existing housing accommodation and making it available on a temporary basis for purposes incidental to its purposes⁶.

A minister of the Crown⁷ may, to such extent and subject to such conditions as he thinks fit, delegate any eligible function of his to a regional development agency⁸. A function is so eligible if it does not consist of a power to make regulations or other instruments of a legislative character or a power to fix fees or charges, and the Secretary of State considers that it can appropriately be exercised by the agency concerned⁹. No delegation may be made without the agreement of the agency concerned, unless a corresponding delegation is made at the same time to all the other regional development agencies¹⁰. No variation of a delegation may be made without the agreement of the agency concerned, unless the delegation did not require the agency's agreement, and a corresponding variation of every corresponding delegation to another agency is made at the same time¹¹. Any delegation under these provisions may be revoked at any time¹². Further provision is made concerning transfer schemes in connection with the delegation of a function, or the revocation of the delegation of a function¹³.

A regional development agency must in exercising its functions have regard to the regional strategy¹⁴ for its region¹⁵. Provision is made with respect to the London Development Agency strategy¹⁶.

The London Development Agency has power to promote or oppose Bills in Parliament¹⁷.

1 Regional Development Agencies Act 1998 s 4(1). As to the regions see PARA 988 note 1. The purposes of a regional development agency now also include the purpose of preparing for the London Olympics: see the London Olympic Games and Paralympic Games Act 2006 s 36 (amended by SI 2007/2129).

2 Regional Development Agencies Act 1998 s 4(2).

3 Ie the provisions of the Regional Development Agencies Act 1998 ss 6-33: see PARA 990 et seq.

4 Regional Development Agencies Act 1998 s 5(1). A person who enters into a transaction with a regional development agency is not concerned to see or inquire whether there has been any failure by the agency to observe its purposes, or whether the transaction would contravene any direction given by the Secretary of State: s 30(1). Furthermore, a transaction entered into by an agency is not invalid merely because the agency fails to observe its purposes or because it carries out the transaction in contravention of any direction given by the Secretary of State: s 30(2). Section 30 has effect in relation to the Mayor of London as it has effect in

relation to the Secretary of State: s 30A (added by the Greater London Authority Act 1999 s 309, Sch 25 para 18). As to the Mayor of London see **LONDON GOVERNMENT**.

5 Regional Development Agencies Act 1998 s 5(2). As to the consent of the Secretary of State see PARA 996. Section 5(2) has effect in relation to the London Development Agency as if the reference to the Secretary of State were for the purposes of head (c) in the text a reference to the Mayor of London: s 5(4) (added by the Greater London Authority Act 1999 Sch 25 para 2). As to the meaning of 'London Development Agency' see PARA 988 note 5.

6 Regional Development Agencies Act 1998 s 5(3).

7 'Minister of the Crown' has the same meaning as in the Ministers of the Crown Act 1975: Regional Development Agencies Act 1998 s 41.

8 Regional Development Agencies Act 1998 s 6(1).

9 Regional Development Agencies Act 1998 s 6(2).

10 Regional Development Agencies Act 1998 s 6(3).

11 Regional Development Agencies Act 1998 s 6(4).

12 Regional Development Agencies Act 1998 s 6(5). The power of a minister of the Crown to delegate a function under s 6 to the London Development Agency has effect subject to s 6A: s 6(7) (added by the Greater London Authority Act 1999 s 305(1)).

The power of a minister of the Crown under the Regional Development Agencies Act 1998 s 6(1) to delegate a function: (1) may be exercised to delegate the function to the Mayor of London instead of to the London Development Agency; and (2) may only be exercised to delegate the function to the London Development Agency with the consent of the Mayor of London: s 6A(1) (s 6A added by the Greater London Authority Act 1999 s 305(2)). Where a minister of the Crown delegates a function to the Mayor of London under the Regional Development Agencies Act 1998 s 6(1) by virtue of head (1) above, then s 6(3), (4), Sch 3 have effect in relation to the delegation as if the Mayor of London were for this purpose a regional development agency: s 6A(2) (as so added). In any case where a function has been delegated to the Mayor of London under s 6(1) by virtue of head (1) above, and the Mayor of London, by an authorisation given in accordance with the Greater London Authority Act 1999 s 38 (see **LONDON GOVERNMENT**), makes the function exercisable by the London Development Agency, the authorisation must be made subject to such conditions as are necessary to ensure that any conditions subject to which the function is delegated to him are also imposed on the London Development Agency: Regional Development Agencies Act 1998 s 6A(3) (as so added).

13 See further the Regional Development Agencies Act 1998 s 6(6), Sch 3.

14 'Regional strategy' means the regional strategy under the Local Democracy, Economic Development and Construction Act 2009 Pt 5 (ss 70-87) (see **TOWN AND COUNTRY PLANNING**): Regional Development Agencies Act 1998 s 7(2) (s 7 substituted by the Local Democracy, Economic Development and Construction Act 2009 s 83). Under the Local Democracy, Economic Development and Construction Act 2009 Pt 5 there is required to be, as from 1 April 2010, a regional strategy for each region other than London, which is to set out policies in relation to, inter alia, sustainable economic growth in the region, and the relevant authorities for each region are required to produce and publish a plan for implementing the regional strategy: see ss 70(2)(a), 81; the Local Democracy, Economic Development and Construction Act 2009 (Commencement No 2) Order 2009, SI 2009/3318, arts 1, 4; and **TOWN AND COUNTRY PLANNING**.

15 Regional Development Agencies Act 1998 s 7(1) (as substituted: see note 14). This provision does not apply in relation to the London Development Agency: s 7(3) (as so substituted).

16 See the Regional Development Agencies Act 1998 s 7A (added by the Greater London Authority Act 1999 s 306(2)) (the London Development Agency strategy); and the Regional Development Agencies Act 1998 s 7B (added by the Greater London Authority Act 1999 s 307; and amended by the Local Democracy, Economic Development and Construction Act 2009 s 85(1), Sch 5 paras 5, 6) (Secretary of State's functions in relation to the London Development Agency strategy).

17 See the Regional Development Agencies Act 1998 s 26A, Sch 6A (added by the Greater London Authority Act 1999 Sch 25 paras 16, 21).

UPDATE

989 Purposes and powers of regional development agencies

TEXT AND NOTES 14, 15--Regional Development Agencies Act 1998 s 7 substituted: Local Democracy, Economic Development and Construction Act 2009 s 83.

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990. Financial matters relating to regional development agencies.

The Secretary of State may, after consultation with a regional development agency, and with the approval of the Treasury, determine the financial duties of the agency; and different determinations may be made for different functions of the agency¹. The Secretary of State must give an agency notice² of every such determination of its financial duties, and such a determination may: (1) relate to a period beginning before, on, or after, the date on which it is made; (2) contain supplemental provisions; and (3) be varied by a subsequent determination³. The Secretary of State may, after consultation with the Treasury, give a direction⁴ to an agency requiring it to pay to him an amount equal to the whole or such part as may be specified in the direction of any sum, or any sum of a description, so specified which is or has been received by the agency⁵. Where it appears to the Secretary of State that an agency has a surplus, whether on capital or revenue account, he may, after consultation with the Treasury, direct the agency to pay to him such amount not exceeding the amount of that surplus as may be specified in the direction⁶.

The Secretary of State may, with the approval of the Treasury, make to an agency other than the London Development Agency grants of such amounts, and on such terms, as he thinks fit⁷; and for the purposes of the London Development Agency the Secretary of State may, with the approval of the Treasury, make to the Greater London Authority⁸ grants of such amounts, and on such terms, as he thinks fit⁹.

A regional development agency is entitled to borrow in accordance with the following provisions¹⁰, but not otherwise¹¹. Subject to one condition, an agency may: (a) with the consent of the Secretary of State¹², borrow temporarily in sterling, by way of overdraft or otherwise, from persons other than the Secretary of State, such sums as it may require for meeting its obligations and carrying out its functions¹³; and (b) borrow from the Secretary of State, by way of temporary loan or otherwise, such sums in sterling as it may require for meeting its obligations and carrying out its functions¹⁴. The condition is that an agency may not borrow under these provisions if the effect would be to take the aggregate amount outstanding in respect of the principal of sums borrowed under these provisions by regional development agencies over the collective borrowing limit¹⁵, or to increase the amount by which the aggregate amount so outstanding exceeds that limit¹⁶.

The Secretary of State may, with the consent of the Treasury, guarantee, in such manner and on such conditions as he may think fit, the repayment of the principal of, the payment of interest on, and the discharge of any other financial obligation in connection with, any sum which a regional development agency borrows from any person¹⁷. The Secretary of State may also, with the approval of the Treasury, lend to a regional development agency any sums which it has power to borrow from the Secretary of State¹⁸.

A regional development agency must keep proper accounts and proper accounting records¹⁹, and prepare in respect of each accounting period²⁰ a statement of accounts giving a true and fair view of the state of affairs and the income and expenditure of the agency²¹. Every statement of accounts so prepared must comply with any requirement which the Secretary of State has, with the consent of the Treasury, notified in writing to the agency and which relates to any of the following matters, namely: (i) the information to be contained in the statement; (ii) the manner in which that information is to be presented; or (iii) the methods and principles according to which the statement is to be prepared²².

The accounts²³ of a regional development agency for each accounting period must be audited by the Comptroller and Auditor General²⁴. A copy of any accounts of an agency which are so audited and the report made on those accounts by the Comptroller and Auditor General must be sent to the Secretary of State as soon as reasonably practicable after the report is received by the agency²⁵. The Secretary of State must lay before each House of Parliament a copy of those accounts and that report²⁶.

- 1 Regional Development Agencies Act 1998 s 9(1). As to the regions see PARA 988 note 1.
- 2 Any notice required or authorised by the Regional Development Agencies Act 1998 Pt I (ss 1-33) to be given to or served on any person may be given to or served on that person either by delivering it to him, or by leaving it at his proper address, or by sending it by post to him at that address: s 31(1), (2). Any such notice may: (1) in the case of a body corporate, be given to or served on the secretary or clerk of that body; and (2) in the case of a partnership, be given to or served on a partner or a person having the control or management of the partnership business: s 31(3). As to the proper address of a person, and the situation where the name or address of a person on whom notice is to be served is difficult to ascertain, see further s 31(4)-(6).
- 3 Regional Development Agencies Act 1998 s 9(2).
- 4 As to directions given by the Secretary of State see PARA 996.
- 5 Regional Development Agencies Act 1998 s 9(3).
- 6 Regional Development Agencies Act 1998 s 9(4). Section 9 does not have effect in relation to the London Development Agency: s 9(5) (added by the Greater London Authority Act 1999 s 309, Sch 25 para 4). As to the meaning of 'London Development Agency' see PARA 988 note 5.
- 7 Regional Development Agencies Act 1998 s 10(1) (numbered as such by the Greater London Authority Act 1999 Sch 25 para 5).
- 8 As to the Greater London Authority see **LONDON GOVERNMENT**.
- 9 See the Regional Development Agencies Act 1998 s 10(2), (3) (s 10(2), (3) added by the Greater London Authority Act 1999 Sch 25 para 5(4)).
- 10 Ie the provisions of the Regional Development Agencies Act 1998 s 11.
- 11 Regional Development Agencies Act 1998 s 11(1).
- 12 The Secretary of State must not give such consent without the approval of the Treasury: Regional Development Agencies Act 1998 s 11(3). As to the consent of the Secretary of State generally see PARA 996.
- 13 Regional Development Agencies Act 1998 s 11(2).
- 14 Regional Development Agencies Act 1998 s 11(4).
- 15 The collective borrowing limit is £177.77 million or such greater sum as the Secretary of State may, with the approval of the Treasury, specify by order made by statutory instrument: Regional Development Agencies Act 1998 s 11(6) (amended by the Greater London Authority Act 1999 Sch 25 para 6(2)). Such an order must not be made unless a draft of the order has been laid before, and approved by a resolution of, the House of Commons: Regional Development Agencies Act 1998 s 11(7).
- 16 Regional Development Agencies Act 1998 s 11(5). Section 11 does not apply in relation to the London Development Agency: s 11(8) (added by the Greater London Authority Act 1999 Sch 25 para 6(3)).
- 17 Regional Development Agencies Act 1998 s 12(1). Further provision is made in relation to the repayment by the agency concerned of any sums paid by the Secretary of State in fulfilment of the guarantee (s 12(4)), and in relation to the laying of both a statement of any such guarantee and a statement of any sums paid thereunder before each House of Parliament (s 12(2), (3)). Section 12 does not apply in relation to the London Development Agency: s 12(5) (added by the Greater London Authority Act 1999 Sch 25 para 7).
- 18 Ie under the Regional Development Agencies Act 1998 s 11(4) (see text and note 14): s 13(1). Further provision is made in relation to the repayment of any such loan by the agency concerned (s 13(2)), the preparation of an account of the sums so lent by the Secretary of State, in accordance with Treasury directions, and the sending of such an account to the Comptroller and Auditor General (s 13(3)), the examination, certification and compiling of a report of the account by the Comptroller and Auditor General and the placing of

both the account and the report before each House of Parliament (s 13(4)), and the payment out of the National Loans Fund of sums to facilitate such loans and the repayment to that fund of any sums repaid by the agency concerned (s 13(5)). As to the National Loans Fund see generally **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 727-739. Section 13 does not apply in relation to the London Development Agency: s 13(6) (added by the Greater London Authority Act 1999 Sch 25 para 8).

19 'Accounting records', in relation to an agency, includes all books, papers and other records of the agency relating to, or to matters dealt with in, the accounts required to be kept by the Regional Development Agencies Act 1998 s 14: s 14(6).

20 'Accounting period', in relation to an agency, means a period beginning with 1 April and ending with the next 31 March: Regional Development Agencies Act 1998 s 14(3). However, the Secretary of State may, in relation to an accounting period of such an agency, direct that the period ends with such other date as may be specified in the direction: s 14(4). Where the Secretary of State has given such a direction, the following accounting period of the agency to which the direction was given begins with the day after the date specified in the direction and, subject to any further direction, ends with the next 31 March: s 14(5).

21 Regional Development Agencies Act 1998 s 14(1).

22 Regional Development Agencies Act 1998 s 14(2). Section 14 does not apply in relation to the London Development Agency: s 14(7) (added by the Greater London Authority Act 1999 Sch 25 para 9).

23 'Accounts', in relation to an agency, include any statement prepared by that agency under the Regional Development Agencies Act 1998 s 14: s 15(3).

24 Regional Development Agencies Act 1998 s 15(1). As to the office of Comptroller and Auditor General see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 724-726.

25 Regional Development Agencies Act 1998 s 15(2).

26 Regional Development Agencies Act 1998 s 15(2).

Section 15(1)-(3) does not apply to the London Development Agency (whose accounts are, by virtue of the Audit Commission Act 1998 Sch 2 para 1(bc), to be audited in accordance with the Audit Commission Act 1998): Regional Development Agencies Act 1998 s 15(4) (added by the Greater London Authority Act 1999 s 308). The London Development Agency must send a copy of its audited accounts to the Mayor of London and the Chair of the London Assembly: Regional Development Agencies Act 1998 s 15(5) (added by the Greater London Authority Act 1999 s 308). As to the Mayor of London and the London Assembly see **LONDON GOVERNMENT**.

Halsbury's Laws of England/TRADE AND INDUSTRY (VOLUME 97 (2010) 5TH EDITION)/4. PROMOTION OF TRADE AND ASSISTANCE TO INDUSTRY/(4) REGIONAL DEVELOPMENT AGENCIES/991. Information, reports and accountability.

991. Information, reports and accountability.

A regional development agency other than the London Development Agency must provide the Secretary of State with such information, advice and assistance as he may require¹.

As soon as reasonably practicable after the end of each accounting period², a regional development agency must prepare a report on its activities during that period and must send a copy of that report to the Secretary of State³. Such a report must: (1) be in such form and contain such information as the Secretary of State may specify by directions⁴ to the agency; and (2) set out any other directions given to the agency under certain provisions⁵ during the period to which the report relates⁶. Following receipt of the report, the Secretary of State must lay a copy of it before each House of Parliament and arrange for copies of it to be published in such manner as he considers appropriate⁷.

An agency must hold a public meeting within such period after the publication of its annual report as the Secretary of State may by directions specify⁸. A regional development agency must give such notice⁹ of the meeting as the Secretary of State may by directions specify and publish it in such manner as he may so specify¹⁰. The Secretary of State may give a regional development agency guidance¹¹ and directions with respect to the conduct of any such meeting¹².

1 Regional Development Agencies Act 1998 s 16 (amended by the Greater London Authority Act 1999 s 309, Sch 25 para 10). As to the regions see PARA 988 note 1. As to the meaning of 'London Development Agency' see PARA 988 note 5.

2 'Accounting period' has the same meaning as in the Regional Development Agencies Act 1998 s 14 (see PARA 990 note 20): s 17(8) (renumbered as s 17(8) by the Greater London Authority Act 1999 Sch 25 para 11).

3 Regional Development Agencies Act 1998 s 17(1).

4 As to directions given by the Secretary of State see PARA 996.

5 Ie the provisions of the Regional Development Agencies Act 1998 Pt I (ss 1-33).

6 Regional Development Agencies Act 1998 s 17(2). Section 17(1), (2) has effect in relation to the London Development Agency as if the references to the Secretary of State were references to the Mayor of London: s 17(4) (s 17(4)-(7) added by the Greater London Authority Act 1999 Sch 25 para 11). As to the Mayor of London see LONDON GOVERNMENT.

7 Regional Development Agencies Act 1998 s 17(3). Section 17(3) does not apply to the London Development Agency: s 17(5) (as added: see note 6). The London Development Agency must send a copy of a report under s 17 to the London Assembly: s 17(6) (as so added). As to the London Assembly see LONDON GOVERNMENT. The Mayor of London must arrange for publication of any report sent to him under s 17: s 17(7) (as so added).

8 Regional Development Agencies Act 1998 s 18(2).

9 As to notices generally see PARA 990 note 2.

10 Regional Development Agencies Act 1998 s 18(3).

11 As to guidance given by the Secretary of State see PARA 996.

12 Regional Development Agencies Act 1998 s 18(4). Section 18(2)-(4) has effect in relation to the London Development Agency as if references to the Secretary of State were references to the Mayor of London: s 18(5) (added by the Greater London Authority Act 1999 Sch 25 para 12).

Halsbury's Laws of England/TRADE AND INDUSTRY (VOLUME 97 (2010) 5TH EDITION)/4. PROMOTION OF TRADE AND ASSISTANCE TO INDUSTRY/(4) REGIONAL DEVELOPMENT AGENCIES/992. Vesting of land in regional development agencies.

992. Vesting of land in regional development agencies.

The Secretary of State may, in relation to land in England, by order made by statutory instrument provide that land specified in the order which is vested in a local authority¹ or other public body or in a wholly-owned subsidiary² of a public body is to vest in a regional development agency³. However, such an order may not specify land vested in statutory undertakers⁴ which is used for the purpose of carrying on their statutory undertakings or which is held for that purpose⁵. In the case of land vested in statutory undertakers, the power to make the order is exercisable by the Secretary of State and the appropriate minister⁶. In addition, no such order may be made in relation to a universal service provider within the meaning of the Postal Services Act 2000⁷. An order under the above provisions has the same effect as a declaration under the Compulsory Purchase (Vesting Declarations) Act 1981 except that, in relation to such an order, that Act and the Land Compensation Act 1961 apply, subject to modifications⁸. Compensation under the 1961 Act as so applied is to be assessed by reference to values current on the date the order comes into force⁹. No order vesting land in a regional development agency¹⁰ may be made unless a draft of the order has been laid before and approved by resolution of each House of Parliament¹¹.

Additional provision is made in relation to various consequential matters which arise following the making of an order vesting land in a regional development agency¹².

1 'Local authority' means a county council, a district council, a London borough council, the Common Council of the City of London and the Council of the Isles of Scilly and, for the purposes of the Regional Development Agencies Act 1998 s 19, 'local authority' also includes a county borough council and a parish council: ss 19(10), 33. As to the regions see PARA 988 note 1.

2 'Wholly-owned subsidiary' has the meaning given by the Companies Act 2006 s 1159 (see COMPANIES vol 14 (2009) PARA 25): Regional Development Agencies Act 1998 s 19(10) (amended by SI 2009/1941).

3 Regional Development Agencies Act 1998 s 19(1).

4 'Statutory undertakers', except where the context otherwise requires, means: (1) persons authorised by any enactment to carry on any railway, light railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertaking, or any undertaking for the supply of hydraulic power; (2) a relevant airport operator (within the meaning of the Airports Act 1986); (3) British Shipbuilders and the Civil Aviation Authority; (4) a person who holds a licence under the Transport Act 2000 Pt I Ch I (ss 1-40) (air traffic services: see AIR LAW vol 2 (2008) PARA 139 et seq) to the extent that the person is carrying out activities authorised by the licence; (5) any other authority, body or undertakers specified in an order made by the Secretary of State by statutory instrument (such instrument to be subject to annulment in pursuance of a resolution of either House of Parliament); and (6) any wholly-owned subsidiary of any person, authority or body mentioned in heads (1)-(3) or of any authority, body or undertakers specified in an order under head (5), and 'statutory undertaking' is to be construed accordingly: Regional Development Agencies Act 1998 s 19(10), (11) (s 19(10) amended by the Transport Act 2000 s 37, Sch 5 para 18; and by SI 2001/1149).

5 Regional Development Agencies Act 1998 s 19(2).

6 Regional Development Agencies Act 1998 s 19(3). The reference in s 19(3) to the Secretary of State and the appropriate minister is: (1) in relation to statutory undertakers who are or are deemed to be statutory undertakers for the purposes of any provision of the Town and Country Planning Act 1990 Pt XI (ss 262-283), to be construed as if contained in that Part; and (2) in relation to any other statutory undertakers, to be construed in accordance with an order made by the Secretary of State by statutory instrument, such instrument to be subject to annulment in pursuance of a resolution of either House of Parliament: Regional Development Agencies Act 1998 s 19(4), (11). If, for the purposes of s 19(3), any question arises as to which minister is the appropriate minister in relation to any statutory undertakers, that question must be determined by the Treasury: s 19(5).

7 Regional Development Agencies Act 1998 s 19(8A) (added by SI 2001/1149).

8 Regional Development Agencies Act 1998 s 19(6). As to the modifications referred to see Sch 4. See also **COMPULSORY ACQUISITION OF LAND**.

9 Regional Development Agencies Act 1998 s 19(7). However, no compensation is payable under the Land Compensation Act 1961 Pt IV (ss 23-29) by virtue of an order under the Regional Development Agencies Act 1998 s 19(1): s 19(8).

10 Ie under the Regional Development Agencies Act 1998 s 19(1).

11 Regional Development Agencies Act 1998 s 19(9). See **PARLIAMENT** vol 34 (Reissue) PARA 944.

12 See Regional Development Agencies Act 1998 s 23, Sch 6 (Sch 6 amended by the Communications Act 2003 s 406(1), (7), Sch 17 para 155, Sch 19(1); the Planning Act 2008 s 194(1), Sch 9 para 6; and SI 2007/3224), which make detailed provision in relation to such matters as the extinguishment of certain rights over land and public rights of way, the power to override easements, consecrated land and burial grounds, open spaces, the displacements of persons in possession of land in certain circumstances, telegraphic lines and statutory undertakers.

Halsbury's Laws of England/TRADE AND INDUSTRY (VOLUME 97 (2010) 5TH EDITION)/4. PROMOTION OF TRADE AND ASSISTANCE TO INDUSTRY/(4) REGIONAL DEVELOPMENT AGENCIES/993. Acquisition of land by regional development agencies.

993. Acquisition of land by regional development agencies.

A regional development agency may for its purposes¹, or for purposes incidental thereto, acquire land by agreement or, on being authorised to do so by the Secretary of State, compulsorily². Such an agency may, for those purposes, be authorised by the Secretary of State, by means of a compulsory purchase order³, to acquire compulsorily such new rights over land⁴ as are specified in the order⁵. Where the land⁶ forms part of a common, open space or fuel or field garden allotment, an agency may (by agreement or, on being authorised to do so by the Secretary of State, compulsorily) acquire land for giving in exchange for the land or, as the case may be, rights acquired⁷. The Acquisition of Land Act 1981 applies to the compulsory acquisition of land⁸, subject to certain modifications⁹. The 1981 Act also applies in part to the compulsory acquisition of a right¹⁰, subject to one modification¹¹. The Compulsory Purchase Act 1965 applies to the acquisition of such rights, subject to modifications¹². Certain provisions of the 1965 Act¹³ also apply to the acquisition of land by a regional development agency by agreement¹⁴.

Any person who is duly authorised in writing by a regional development agency may at any reasonable time enter any land for the purpose of surveying¹⁵ it, or estimating its value, in connection with any proposal by the agency to acquire the land or any other land or any claim for compensation in respect of any such acquisition¹⁶. A person so authorised to enter any land must, if so required, produce evidence of his authority before entry¹⁷. A person may only exercise a right to enter any land if at least 28 days' notice¹⁸ of the intended entry is given to every owner¹⁹ or occupier of the land²⁰. Where any land is damaged in the exercise of such a right of entry, or in the making of any survey for the purpose of which any such right of entry has been so conferred, compensation in respect of the damage may be recovered by any person interested in the land from the regional development agency which authorised the exercise of the powers conferred by these provisions²¹.

Any person who intentionally obstructs a person acting in exercise of his powers under the above provisions²² commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale²³. Any person who is admitted into a factory, workshop or workplace in compliance with such provisions commits an offence if he discloses to any person any information obtained by him in it as to any manufacturing process or trade secret²⁴. A person who is guilty of an offence in the latter case is liable on summary conviction to a fine not exceeding the statutory maximum, and on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or to both²⁵.

Additional provision is made in relation to various consequential matters which arise following the acquisition of land by a regional development agency²⁶.

1 As to the purposes of a regional development agency see PARA 989.

2 Regional Development Agencies Act 1998 s 20(1).

3 'Compulsory purchase order' has the same meaning as in the Acquisition of Land Act 1981 (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 557): Regional Development Agencies Act 1998 s 20(8).

4 'New rights over land' means rights over land which are not in existence when the order specifying them is made: Regional Development Agencies Act 1998 s 20(8).

5 Regional Development Agencies Act 1998 s 20(2).

6 le the land referred to in the Regional Development Agencies Act 1998 s 20(1), (2).

7 Regional Development Agencies Act 1998 s 20(3). The London Development Agency must not by virtue of s 20(1) or (3) submit to the Secretary of State a compulsory purchase order authorising the acquisition of any land in accordance with the Acquisition of Land Act 1981 s 2(2) (see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 557) unless the Mayor of London has given his consent: Regional Development Agencies Act 1998 s 20(3A) (added by the Greater London Authority Act 1999 s 309, Sch 25 para 13). As to the meaning of 'London Development Agency' see PARA 988 note 5. As to the Mayor of London see **LONDON GOVERNMENT**.

8 le by virtue of the Regional Development Agencies Act 1998 s 20(1), (3).

9 Regional Development Agencies Act 1998 s 20(4). As to the modifications referred to see Sch 5 Pt I (amended by the Planning and Compulsory Purchase Act 2004 ss 118(2), 120, Sch 7 para 21(1), Sch 9).

10 le by virtue of the Regional Development Agencies Act 1998 s 20(2).

11 See the Regional Development Agencies Act 1998 s 20(5); and the Acquisition of Land Act 1981 Sch 3.

12 See the Regional Development Agencies Act 1998 s 20(6), Sch 5 Pt II (Sch 5 Pt II amended by the Tribunals, Courts and Enforcement Act 2007 s 139, Sch 22 para 10).

13 le the provisions of the Compulsory Purchase Act 1965 ss 1-30, 32, so far as applicable.

14 Regional Development Agencies Act 1998 s 20(7). In the Compulsory Purchase Act 1965 ss 1-30, 32, as so applied, 'land' has the meaning given by the Interpretation Act 1978: Regional Development Agencies Act 1998 s 20(7).

15 The power under the Regional Development Agencies Act 1998 s 21(1) to survey land includes power to search, bore and remove soil samples for the purpose of ascertaining the nature of the subsoil or the presence in it of minerals or pollutants: s 21(5). No person may carry out under s 21 any works authorised by virtue of s 21(5) unless notice of his intention to do so was included in the notice under s 21(3) (see text and notes 18-20): s 21(6). The authority of the appropriate minister is required for the carrying out under s 21 of works authorised by virtue of s 21(5) if the land in question is held by statutory undertakers and they object to the proposed works on the ground that the execution of the works would be seriously detrimental to the carrying on of their undertaking: s 21(7). Expressions used in s 21(7) have the same meanings as they have in the Town and Country Planning Act 1990 s 325(9) (supplementary provisions as to rights of entry: see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 57): Regional Development Agencies Act 1998 s 21(11).

16 Regional Development Agencies Act 1998 s 21(1).

17 Regional Development Agencies Act 1998 s 21(2).

18 Such a notice must state the purpose for which entry is required and must inform the person to whom it is given of his rights under the Regional Development Agencies Act 1998 s 21: s 21(4). As to notices generally see PARA 990 note 2.

19 'Owner', in this context, has the same meaning as in the Acquisition of Land Act 1981 (see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 560): Regional Development Agencies Act 1998 s 21(10).

20 Regional Development Agencies Act 1998 s 21(3).

21 Regional Development Agencies Act 1998 s 21(8). The Town and Country Planning Act 1990 s 118 (determination of claims for compensation: see **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARA 931) applies in relation to compensation under the Regional Development Agencies Act 1998 s 21(8) as it applies in relation to compensation under the Town and Country Planning Act 1990 Pt IV (ss 107-118): Regional Development Agencies Act 1998 s 21(9).

22 le under the Regional Development Agencies Act 1998 s 21.

23 Regional Development Agencies Act 1998 s 22(1). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

24 Regional Development Agencies Act 1998 s 22(2). Section 22(2) does not apply if the disclosure is made by a person in the course of performing his duty in connection with the purpose for which he was authorised to enter the premises: s 22(3).

25 Regional Development Agencies Act 1998 s 22(4). As to the statutory maximum see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 140.

26 See the Regional Development Agencies Act 1998 s 23, Sch 6 (Sch 6 amended by the Communications Act 2003 s 406(1), (7), Sch 17 para 155, Sch 19(1); the Planning Act 2008 s 194(1), Sch 9 para 6; and SI 2007/3224), which provide for the same matters as are provided for in relation to an order vesting land in a regional development agency (see PARA 992 note 12), with the exception of the extinguishment of rights over land.

Halsbury's Laws of England/TRADE AND INDUSTRY (VOLUME 97 (2010) 5TH EDITION)/4. PROMOTION OF TRADE AND ASSISTANCE TO INDUSTRY/(4) REGIONAL DEVELOPMENT AGENCIES/994. Connection notices.

994. Connection notices.

For its purposes¹, or for purposes incidental thereto, a regional development agency may serve a notice, known as a 'connection notice', on the local highway authority² requiring the authority to connect a private street³ to an existing highway⁴. A connection notice must specify: (1) the private street and the existing highway; (2) the works which appear to the agency to be necessary to make the connection; and (3) the period within which those works ought to be carried out⁵. Before serving a connection notice an agency must consult the local highway authority about the proposed contents of the notice⁶. Within the period of two months beginning with the date on which the connection notice was served, the local highway authority may appeal against the notice to the Secretary of State⁷. After considering any representations made to him by the agency concerned and the local highway authority, the Secretary of State must determine such an appeal by setting aside or confirming the connection notice, with or without modifications⁸. A connection notice becomes effective: (a) where no appeal is made within the two month period, upon the expiry of that period; (b) where an appeal is made within that period but withdrawn before it has been determined by the Secretary of State, on the date following the expiry of the period of 21 days beginning with the date on which the Secretary of State is notified of the withdrawal; (c) where an appeal is made and the connection notice is confirmed by a determination⁹, on such date as the Secretary of State may specify in the determination¹⁰. Where a connection notice becomes effective, the local highway authority must carry out the works specified in the notice within such period as may be specified and may recover the expenses reasonably incurred by it in doing so from the regional development agency which served the notice¹¹. If the local highway authority does not carry out the works specified in the notice within such period as may be so specified, the agency which served the notice may itself carry out or complete those works or arrange for another person to do so¹².

1 As to the purposes of a regional development agency see PARA 989.

2 'Local highway authority' has the same meaning as in the Highways Act 1980 (see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 56); Regional Development Agencies Act 1998 s 24(9).

3 'Private street' has the same meaning as in the Highways Act 1980 Pt XI (ss 203-237) (see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 10); Regional Development Agencies Act 1998 s 24(9).

4 Ie whether or not it is a highway which for the purposes of the Highways Act 1980 is a highway maintainable at the public expense: Regional Development Agencies Act 1998 s 24(1). As to notices generally see PARA 990 note 2.

5 Regional Development Agencies Act 1998 s 24(2).

6 Regional Development Agencies Act 1998 s 24(3).

7 Regional Development Agencies Act 1998 s 24(4).

8 Regional Development Agencies Act 1998 s 24(5).

9 Ie a determination under the Regional Development Agencies Act 1998 s 24(5).

10 Regional Development Agencies Act 1998 s 24(6).

11 Regional Development Agencies Act 1998 s 24(7).

12 Regional Development Agencies Act 1998 s 24(8).

Halsbury's Laws of England/TRADE AND INDUSTRY (VOLUME 97 (2010) 5TH EDITION)/4. PROMOTION OF TRADE AND ASSISTANCE TO INDUSTRY/(4) REGIONAL DEVELOPMENT AGENCIES/995. Transfer of property, rights and liabilities from the Development Commission.

995. Transfer of property, rights and liabilities from the Development Commission.

The Secretary of State had power to make directions¹ requiring the Development Commission² to make one or more schemes for the transfer to regional development agencies of such of the Commission's property, rights and liabilities as appeared to him appropriate to be transferred in consequence of the carrying out by regional development agencies of an activity of the Commission³.

The Secretary of State also had power to make an order by statutory instrument: (1) making provision conferring on the Commission functions with respect to the provision of services of any description to regional development agencies; (2) making provision for the transfer of any function of the Commission to another public body; (3) making provision conferring on another public body a function corresponding to any extent to a function of the Commission; (4) making provision terminating the exercise by the Commission of any of its functions; (5) making provision extinguishing any liability of the Commission in respect of money lent or advanced to it at any time by the Secretary of State⁴; (6) making provision for winding up the Commission's affairs; and (7) making provision for the dissolution of the Commission⁵. Any sums arising out of the transfer of property, or out of property transferred, to a minister of the Crown⁶ by such an order had to be paid into the Consolidated Fund⁷. Provision is made in relation to the corporation tax and stamp duty implications of a transfer scheme under the above provisions⁸.

1 As to directions given by the Secretary of State see PARA 996.

2 The Development Commission was dissolved with effect from 1 July 2000; some of its property was transferred to the Secretary of State and any remaining functions, property, rights and liabilities were transferred to the Countryside Agency, whose functions have now been taken over by Natural England: see the Development Commission (Dissolution) Order 2000, SI 2000/1505. As to Natural England see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 523.

3 Regional Development Agencies Act 1998 s 34(1). Further provision is made as to the making and approval of such a transfer scheme, the contents of a scheme, its effect (including its effect on contracts of employment), modification of a scheme and the provision of information to the Secretary of State: see s 34(2), Sch 8.

4 No provision could be made under head (5) in the text without the consent of the Treasury: Regional Development Agencies Act 1998 s 35(2). If an order under s 35 made provision under head (5) in the text, the assets of the National Loans Fund were to be reduced by the aggregate amount by which the liabilities of the Commission were thereby reduced: s 35(9). As to the National Loans Fund see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 727-739.

5 See the Regional Development Agencies Act 1998 s 35(1), (3)-(7). See the Development Commission (Transfer of Functions and Miscellaneous Provisions) Order 1999, SI 1999/416, which: (1) provided for the Development Commission to have functions with respect to the provision of certain services to regional development agencies; (2) transferred to the Countryside Commission (renamed the 'Countryside Agency' by that Order: see art 3) the Development Commission's functions and powers under the Miscellaneous Financial Provisions Act 1983 s 1(3), (4); (3) required the Development Commission to make one or more schemes for the transfer to the Countryside Agency of such of the Development Commission's property, rights and liabilities as appeared to the Secretary of State to be appropriate; and (4) specified the limited residual functions of the Development Commission following such transfers. See also the Development Commission (Dissolution) Order 2000, SI 2000/1505; and note 2.

6 As to the meaning of 'minister of the Crown' see PARA 989 note 7.

7 Regional Development Agencies Act 1998 s 35(8).

8 See the Regional Development Agencies Act 1998 ss 38, 39 (amended by the Housing and Regeneration Act 2008 ss 56, 321(1), Sch 8 paras 66, 69, Sch 16 and Sch 8 para 70 respectively).

Halsbury's Laws of England/TRADE AND INDUSTRY (VOLUME 97 (2010) 5TH EDITION)/4. PROMOTION OF TRADE AND ASSISTANCE TO INDUSTRY/(4) REGIONAL DEVELOPMENT AGENCIES/996. The role of the Secretary of State.

996. The role of the Secretary of State.

The Secretary of State may give a regional development agency guidance or directions in relation to the exercise of its functions¹.

Such directions may restrict the agency in relation to the exercise of its functions or require it to exercise its functions in any manner specified in the directions², and may be of a general or particular nature³. The power to give a direction⁴ is exercisable only after consultation with the body concerned⁵. Any such direction must be in writing⁶. It is the duty of a body to which such a direction is given to comply with it⁷. Any power to give such a direction includes power to vary or revoke it⁸.

The power to give guidance⁹ is exercisable only after consultation with the agency concerned¹⁰. In exercising its functions, an agency must have regard to any such guidance¹¹. Any power to give such guidance includes power to vary or revoke the guidance¹². The Secretary of State must arrange for any guidance given to be published in such manner as he considers appropriate¹³.

A consent given¹⁴ by the Secretary of State to a regional development agency: (1) may be given unconditionally or subject to conditions; (2) may be given in relation to a particular case or in relation to such descriptions of case as may be specified in the consent; and (3) except in relation to anything already done or agreed to be done on the authority of the consent, may be varied or revoked by a notice¹⁵ given by the Secretary of State to the agency¹⁶.

1 Regional Development Agencies Act 1998 s 27(1). As to the functions of regional development agencies see PARA 989.

Section 27(1) has effect in relation to the London Development Agency as if the reference to the Secretary of State were a reference to the Mayor of London: s 27(1A) (added by the Greater London Authority Act 1999 s 309, Sch 25 para 17). As to the meaning of 'London Development Agency' see PARA 988 note 5. As to the Mayor of London see **LONDON GOVERNMENT**.

2 Regional Development Agencies Act 1998 s 27(2).

3 Regional Development Agencies Act 1998 s 27(3). The generality of the power conferred by s 27 is not prejudiced by any other power conferred by Pt I (ss 1-33): s 27(4).

4 This applies to any power to give a direction under the Regional Development Agencies Act 1998.

5 Regional Development Agencies Act 1998 s 40(1).

6 Regional Development Agencies Act 1998 s 40(2).

7 Regional Development Agencies Act 1998 s 40(3).

8 Regional Development Agencies Act 1998 s 40(4).

9 This applies to any power to give guidance under the Regional Development Agencies Act 1998 Pt I.

10 Regional Development Agencies Act 1998 s 28(1).

11 Regional Development Agencies Act 1998 s 28(2).

12 Regional Development Agencies Act 1998 s 28(3).

13 Regional Development Agencies Act 1998 s 28(4). Section 28 has effect in relation to the Mayor of London as it has effect in relation to the Secretary of State: s 30A (added by the Greater London Authority Act 1999 Sch 25 para 18).

14 Ie under the Regional Development Agencies Act 1998 Pt I.

15 As to notices generally see PARA 990 note 2.

16 Regional Development Agencies Act 1998 s 29. Section 29 has effect in relation to the Mayor of London as it has effect in relation to the Secretary of State: s 30A (as added: see note 13).

Halsbury's Laws of England/TRADE AND INDUSTRY (VOLUME 97 (2010) 5TH EDITION)/4. PROMOTION OF TRADE AND ASSISTANCE TO INDUSTRY/(5) ECONOMIC PROSPERITY BOARDS AND COMBINED AUTHORITIES/(i) Economic Prosperity Boards/997. Establishment, constitution and functions of economic prosperity boards.

(5) ECONOMIC PROSPERITY BOARDS AND COMBINED AUTHORITIES

(i) Economic Prosperity Boards

997. Establishment, constitution and functions of economic prosperity boards.

The Local Democracy, Economic Development and Construction Act 2009 makes provision, *inter alia*, about local and regional development. Part 6¹ provides for the establishment of economic prosperity boards and combined authorities. The Secretary of State² may by order³ establish as a body corporate an economic prosperity board (an 'EPB') for an area that meets the following conditions⁴. Condition A is that the area consists of the whole of two or more local government areas⁵ in England⁶; condition B is that no part of the area is separated from the rest of it by one or more local government areas that are not within the area⁷; condition C is that there is no local government area that is surrounded by local government areas that are within the area but that is not itself within the area⁸; condition D is that no part of the area forms part of: (1) the area of another EPB; or (2) the area of a combined authority⁹; condition E is that each local government area that forms part of the area was included in a scheme¹⁰ for the establishment of an EPB¹¹. An order establishing an EPB must specify the name by which the EPB is to be known¹².

The Secretary of State may by order make provision in relation to an EPB about: (a) the membership of the EPB¹³; (b) the voting powers of members of the EPB¹⁴; (c) the executive arrangements of the EPB¹⁵. Such an order may not provide for the budget of an EPB to be agreed otherwise than by the EPB¹⁶.

The Secretary of State may by order provide for a function of a local authority¹⁷ that is exercisable in relation to an area within an EPB's area to be exercisable by the EPB in relation to the EPB's area¹⁸. The Secretary of State may make such an order only if the Secretary of State considers that the function can appropriately be exercised by the EPB¹⁹. Such an order may make provision for the function to be exercisable by the EPB either generally or subject to such conditions or limitations as may be specified in the order²⁰. An order may make provision: (i) for the function to be exercisable by the EPB instead of by the local authority; or (ii) for the function to be exercisable by the EPB concurrently with the local authority²¹. An EPB must perform the functions that are exercisable by the EPB by virtue of these provisions with a view to promoting the economic development and regeneration of its area²².

1 Ie the Local Democracy, Economic Development and Construction Act 2009 Pt 6 (ss 88-120), which extends to England and Wales only (s 147(1)) and came into force on 17 December 2009 (ss 88-113, 118-120) and 12 January 2010 (ss 114-117) (see the Local Democracy, Economic Development and Construction Act 2009 (Commencement No 2) Order 2009, SI 2009/3318, arts 1-3). As to the Local Democracy, Economic Development and Construction Act 2009 Pt 5 (ss 70-87) see PARA 989 note 14; and **TOWN AND COUNTRY PLANNING**.

2 As to the Secretary of State see PARA 802. It appears that the Secretary of State here concerned is the Secretary of State for Communities and Local Government.

3 Orders under the Local Democracy, Economic Development and Construction Act 2009 Pt 6 must be made by statutory instrument: s 117(1). A statutory instrument containing an order under Pt 6 may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament: s 117(2). A statutory instrument containing only an order under s 116 (see PARA 1006) that amends

or revokes provision contained in an instrument subject to annulment by resolution of either House of Parliament is subject to annulment by such resolution: s 117(3). If a draft of an order under Pt 6 would, apart from the present provision, be treated for the purposes of the standing orders of either House of Parliament as a hybrid instrument, it is to proceed in that House as if it were not a hybrid instrument: s 117(4). See **PARLIAMENT** vol 34 (Reissue) PARAS 944-946. As to orders under Pt 6 see further PARAS 1006-1007.

4 Local Democracy, Economic Development and Construction Act 2009 s 88(1). In Pt 6, 'EPB' means an economic prosperity board as so established: s 120. As to the requirements for the making of orders see PARA 1000.

5 In the Local Democracy, Economic Development and Construction Act 2009 Pt 6, 'local government area' means the area of: (1) a county council; or (2) a district council: ss 88(7), 120.

6 Local Democracy, Economic Development and Construction Act 2009 s 88(2).

7 Local Democracy, Economic Development and Construction Act 2009 s 88(3).

8 Local Democracy, Economic Development and Construction Act 2009 s 88(4).

9 Local Democracy, Economic Development and Construction Act 2009 s 88(5). 'Combined authority' means an authority established under s 103(1) (see PARA 1002 et seq): s 120.

10 Is a scheme prepared and published under the Local Democracy, Economic Development and Construction Act 2009 s 98: see PARA 1000.

11 Local Democracy, Economic Development and Construction Act 2009 s 88(6).

12 Local Democracy, Economic Development and Construction Act 2009 s 88(8). An EPB may change its name by a resolution in accordance with the following provisions: s 94(1). The resolution must be considered at a meeting of the EPB that is specially convened for the purpose: s 94(2). Particulars of the resolution must have been included in the notice of the meeting: s 94(3). The resolution must be passed at the meeting by not less than two-thirds of the members of the EPB who vote on it: s 94(4). An EPB that changes its name under these provisions must: (1) send notice of the change to the Secretary of State; and (2) publish the notice in such manner as the Secretary of State may direct: s 94(5). A change of name under these provisions does not affect the rights or obligations of the EPB or any other person, or render defective any legal proceedings: s 94(6). Any legal proceedings may be commenced or continued as if there had been no change of name: s 94(7).

13 Local Democracy, Economic Development and Construction Act 2009 s 89(1)(a). The provision that may be made about membership includes provision about: (1) the number and appointment of members of the EPB; (2) the remuneration of, and pensions or allowances payable to or in respect of, any member of the EPB: s 89(2). An order under s 89 that includes provision about the number and appointment of members of an EPB must provide: (a) for a majority of the members of the EPB to be appointed by the EPB's constituent councils; (b) for those members to be appointed from among the elected members of the constituent councils; and (c) for each constituent council that is a representative council to appoint at least one of its elected members as a member of the EPB: s 90(1). For these purposes: (i) a county council is a constituent council of an EPB if the area of the county council, or part of that area, is within the EPB's area; (ii) a district council is a constituent council of an EPB if the area of the district council is within the EPB's area: s 90(2). For the purposes of s 90, the following are representative councils in relation to an EPB: (A) if the EPB's area coincides with or includes the whole of the area of a county council, the county council; (B) if the EPB's area includes part of the area of a county council, the county council or each district council for an area within that part, as determined by or in accordance with the order; (C) if the EPB's area includes the area of a unitary district council, the district council: s 90(3). In Pt 6, 'unitary district council' means a district council whose area is not part of the area of a county council: ss 90(4), 120.

If an order under s 89 provides for members of an EPB to be appointed otherwise than from among the elected members of its constituent councils, the order must provide for those members to be non-voting members: s 90(5). The voting members of an EPB may resolve that provision made in accordance with s 90(5) is not to apply in the case of the EPB: s 90(6).

14 Local Democracy, Economic Development and Construction Act 2009 s 89(1)(b). The provision that may be made about voting powers includes provision for different weight to be given to the vote of different descriptions of member: s 89(3).

15 Local Democracy, Economic Development and Construction Act 2009 s 89(1)(c). The provision that may be made about executive arrangements includes provision about: (1) the appointment of an executive; (2) the functions of the EPB that are the responsibility of an executive; (3) the functions of the EPB that are the responsibility of an executive and that may be discharged by a committee of the EPB or by a body other than the EPB; (4) arrangements relating to the review and scrutiny of the discharge of functions; (5) access to information on the proceedings of an executive of the EPB; (6) the disapplication of the Local Government and

Housing Act 1989 s 15 (duty to allocate seats to political groups: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 375) in relation to an executive of the EPB or a committee of such an executive; (7) the keeping of a record of any arrangements relating to the EPB and falling within heads (1)-(6): Local Democracy, Economic Development and Construction Act 2009 s 89(4).

16 Local Democracy, Economic Development and Construction Act 2009 s 89(5).

17 For these purposes, 'local authority' means: (1) a county council; or (2) a district council: Local Democracy, Economic Development and Construction Act 2009 s 91(6).

18 Local Democracy, Economic Development and Construction Act 2009 s 91(1).

19 Local Democracy, Economic Development and Construction Act 2009 s 91(2).

20 Local Democracy, Economic Development and Construction Act 2009 s 91(3).

21 Local Democracy, Economic Development and Construction Act 2009 s 91(4).

22 Local Democracy, Economic Development and Construction Act 2009 s 91(5).

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998. Funding, accounts etc.

The Secretary of State¹ may by order make provision: (1) for the costs of an EPB² to be met by its constituent councils³; and (2) about the basis on which the amount payable by each constituent council is to be determined⁴.

Each EPB must keep a fund to be known as the general fund⁵. All receipts of the EPB must be carried to that fund⁶. All liabilities falling to be discharged by the EPB must be discharged out of that fund⁷. Accounts must be kept of: (a) receipts carried to the general fund; and (b) payments made out of the general fund⁸.

1 As to the Secretary of State see PARA 802 and PARA 997 note 2.

2 As to the meaning of 'EPB' see PARA 997 note 4, and as to the establishment and functions of EPBs see PARA 997.

3 For these purposes: (1) a county council is a constituent council of an EPB if the area of the county council, or part of that area, is within the EPB's area; (2) a district council is a constituent council of an EPB if the area of the district council is within the EPB's area: Local Democracy, Economic Development and Construction Act 2009 s 92(2).

4 Local Democracy, Economic Development and Construction Act 2009 s 92(1). As to the area of an EPB see PARA 997. As to the making of orders under Pt 6 (ss 88-120) see PARA 997 note 3.

5 Local Democracy, Economic Development and Construction Act 2009 s 93(1).

6 Local Democracy, Economic Development and Construction Act 2009 s 93(2).

7 Local Democracy, Economic Development and Construction Act 2009 s 93(3).

8 Local Democracy, Economic Development and Construction Act 2009 s 93(4).

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999. Changes to and dissolution of an EPB's area.

The Secretary of State¹ may by order change the boundaries of an EPB's area² by: (1) adding a local government area³ to an existing area of an EPB; or (2) removing a local government area from an existing area of an EPB⁴. Such an order may be made only if: (a) the area to be created by the order meets conditions A to D for the establishment of an EPB⁵; and (b) each council to which these provisions apply⁶ consents to the making of the order⁷.

The Secretary of State may by order: (i) dissolve an EPB's area; and (ii) abolish the EPB for the area⁸. Such an order may be made only if a majority of the councils to which these provisions apply⁹ consent to the making of the order¹⁰.

- 1 As to the Secretary of State see PARA 802 and PARA 997 note 2.
- 2 As to the meaning of 'EPB' see PARA 997 note 4, and as to the area of an EPB see PARA 997.
- 3 As to the meaning of 'local government area' see PARA 997 note 5.
- 4 Local Democracy, Economic Development and Construction Act 2009 s 95(1). As to the making of orders under Pt 6 (ss 88-120) see PARA 997 note 3.
- 5 Ie conditions A-D in the Local Democracy, Economic Development and Construction Act 2009 s 88: see PARA 997 text to notes 5-9.
- 6 Ie: (1) a county council whose area, or part of whose area, is to be added to or removed from the existing area of the EPB; (2) a district council whose area is to be added to or removed from the existing area of the EPB: Local Democracy, Economic Development and Construction Act 2009 s 95(3).
- 7 Local Democracy, Economic Development and Construction Act 2009 s 95(2).
- 8 Local Democracy, Economic Development and Construction Act 2009 s 96(1).
- 9 Ie: (1) a county council whose area, or part of whose area, is within the EPB's area; (2) a unitary district council whose area is within the EPB's area: Local Democracy, Economic Development and Construction Act 2009 s 96(3). As to the meaning of 'unitary district council' see PARA 997 note 13.
- 10 Local Democracy, Economic Development and Construction Act 2009 s 96(2).

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1000. Requirements as to orders for establishment of EPBs.

Any two or more of the authorities to which these provisions apply¹ may undertake a review of the effectiveness and efficiency of arrangements to promote economic development and regeneration within the area covered by the review (the 'review area')². Where the review is being undertaken by a county council, the review area must include the areas of one or more district councils that are within the area of the county council or, if there are no such areas, the area of the county council³. Where the review is being undertaken by a district council, the review area must include the area of the district council⁴. The review area may also include the area of any county council or district council in England not undertaking the review⁵.

Where two or more of the authorities that have undertaken a review conclude that the establishment of an EPB⁶ for an area would be likely to improve: (1) the exercise of statutory functions relating to economic development and regeneration in the area; and (2) economic conditions in the area, the authorities may prepare and publish a scheme for the establishment of an EPB for the area (the 'scheme area')⁷. Subject as follows, the scheme area: (a) must consist of or include the whole or any part of the review area; (b) may include one or more other local government areas⁸; and (c) must meet conditions A to C⁹ for the establishment of an EPB¹⁰. The scheme area may not include a local government area unless each appropriate authority for that area¹¹ either participates in the preparation of the scheme or consents to its inclusion in the scheme area¹².

The Secretary of State¹³ may make an order establishing an EPB for an area only if, having regard to a scheme prepared and published as above, the Secretary of State considers that to do so is likely to improve: (i) the exercise of statutory functions relating to economic development and regeneration in the area; and (ii) economic conditions in the area¹⁴. Before making the order, the Secretary of State must consult each appropriate authority¹⁵ and such other persons (if any) as the Secretary of State considers appropriate¹⁶. In making the order, the Secretary of State must have regard to the need to reflect the identities and interests of local communities and to secure effective and convenient local government¹⁷.

1 The Local Democracy, Economic Development and Construction Act 2009 s 97 applies to: (1) a county council in England; (2) a district council in England: s 97(2).

2 Local Democracy, Economic Development and Construction Act 2009 s 97(1).

3 Local Democracy, Economic Development and Construction Act 2009 s 97(3).

4 Local Democracy, Economic Development and Construction Act 2009 s 97(4).

5 Local Democracy, Economic Development and Construction Act 2009 s 97(5).

6 As to the meaning of 'EPB' see PARA 997 note 4, and as to the establishment and functions of EPBs see PARA 997.

7 Local Democracy, Economic Development and Construction Act 2009 s 98(1), (2).

8 As to the meaning of 'local government area' see PARA 997 note 5.

9 ie conditions A-C in the Local Democracy, Economic Development and Construction Act 2009 s 88: see PARA 997 text to notes 5-8.

10 Local Democracy, Economic Development and Construction Act 2009 s 98(3).

11 For this purpose: (1) a county council is an appropriate authority for a local government area that is or forms part of the area of that county council; (2) a district council is an appropriate authority for a local government area that is the area of that district council: Local Democracy, Economic Development and Construction Act 2009 s 98(5).

12 Local Democracy, Economic Development and Construction Act 2009 s 98(4).

13 As to the Secretary of State see PARA 802 and PARA 997 note 2.

14 Local Democracy, Economic Development and Construction Act 2009 s 99(1). As to the making of orders under Pt 6 (ss 88-120) see PARA 997 note 3.

15 For the purposes of the Local Democracy, Economic Development and Construction Act 2009 s 99: (1) a county council is an appropriate authority if the area of the county council, or part of that area, is within the area for which the EPB is to be established; (2) a district council is an appropriate authority if the area of the district council is within the area for which the EPB is to be established: s 99(3).

16 Local Democracy, Economic Development and Construction Act 2009 s 99(2).

17 Local Democracy, Economic Development and Construction Act 2009 s 99(4).

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1001. Review of existing EPBs.

Any one or more of the authorities to which these provisions apply¹ may undertake, in relation to an existing EPB, a review of one or more EPB matters². The review must relate to one or more areas of an EPB or proposed areas of an EPB³.

Where one or more of the authorities that have undertaken a review conclude that the exercise of the power to make an order⁴ would be likely to improve: (1) the exercise of statutory functions relating to economic development and regeneration in an area of an EPB⁵ or a proposed area of an EPB; or (2) economic conditions in such an area, the authorities may prepare and publish a scheme relating to the power or powers in question⁶.

The Secretary of State⁷ may make an order⁸ in relation to an existing EPB only if, having regard to a scheme prepared and published as above, the Secretary of State considers that the making of the order is likely to improve: (a) the exercise of statutory functions relating to economic development and regeneration in the area or areas to which the order relates; or (b) economic conditions in that area or those areas⁹. Before making the order, the Secretary of State must consult such of the relevant authorities¹⁰ and such other persons (if any) as the Secretary of State considers appropriate¹¹. In making the order, the Secretary of State must have regard to the need: (i) to reflect the identities and interests of local communities; and (ii) to secure effective and convenient local government¹².

1 The Local Democracy, Economic Development and Construction Act 2009 s 100 applies to: (1) an EPB; (2) a county council whose area, or part of whose area, is within an area of an EPB or could be within a proposed area of an EPB; (3) a district council whose area is within an area of an EPB or could be within a proposed area of an EPB: s 100(2). As to the meaning of 'EPB' see PARA 997 note 4, and as to the establishment, area and functions of EPBs see PARA 997. In ss 100, 101, 'proposed area of an EPB' means an area of an EPB that may be created by an order under s 95 (changes to boundaries of an EPB's area: see PARA 999): s 100(5).

2 Local Democracy, Economic Development and Construction Act 2009 s 100(1). For the purposes of s 100 an 'EPB matter' is: (1) a matter in relation to which an order may be made under any of ss 89, 91, 92, 95 and 96 (see PARAS 997-999); (2) a matter concerning the EPB that the EPB has power to determine: s 100(3).

3 Local Democracy, Economic Development and Construction Act 2009 s 100(4).

4 Ie under any one or more of the Local Democracy, Economic Development and Construction Act 2009 ss 89, 91, 92, 95 and 96. As to the making of orders under Pt 6 (ss 88-120) see PARA 997 note 3.

5 The reference to an area of an EPB includes an area that would cease to be an area of an EPB if an order were made in relation to that area under the Local Democracy, Economic Development and Construction Act 2009 s 96 (dissolution of an EPB's area: see PARA 999): s 101(3).

6 Local Democracy, Economic Development and Construction Act 2009 s 101(1), (2).

7 As to the Secretary of State see PARA 802 and PARA 997 note 2.

8 Ie under any of the Local Democracy, Economic Development and Construction Act 2009 ss 89, 91, 92, 95 and 96.

9 Local Democracy, Economic Development and Construction Act 2009 s 102(1).

10 Ie the authorities mentioned in the Local Democracy, Economic Development and Construction Act 2009 s 100(2): see note 1.

11 Local Democracy, Economic Development and Construction Act 2009 s 102(2).

12 Local Democracy, Economic Development and Construction Act 2009 s 102(3).

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(ii) Combined Authorities

1002. Establishment, constitution and functions of combined authorities.

The Secretary of State¹ may by order establish as a body corporate a combined authority for an area that meets the following conditions². Condition A is that the area consists of the whole of two or more local government areas³ in England⁴; condition B is that no part of the area is separated from the rest of it by one or more local government areas that are not within the area⁵; condition C is that there is no local government area that is surrounded by local government areas that are within the area but that is not itself within the area⁶; condition D is that no part of the area forms part of: (1) the area of another combined authority; (2) the area of an EPB⁷; or (3) an integrated transport area⁸; condition E is that each local government area that forms part of the area was included in a scheme⁹ for the establishment of a combined authority¹⁰. An order must specify the name by which the combined authority is to be known¹¹.

The Secretary of State may by order make in relation to a combined authority any provision that may be made under the Local Transport Act 2008 in relation to an Integrated Transport Authority (an 'ITA') as to constitutional arrangements¹², delegation of functions of the Secretary of State¹³, delegation of local authority functions¹⁴ and conferral of a power to give a direction¹⁵ about the exercise of an eligible power¹⁶. The Secretary of State may by order transfer functions of an ITA to a combined authority¹⁷. Such an order may only be made in relation to functions exercisable by the ITA in relation to an area that becomes, or becomes part of, the combined authority's area by virtue of an order under Part 6 of the Local Democracy, Economic Development and Construction Act 2009¹⁸. The Secretary of State may by order provide for any function that is conferred or imposed on a Passenger Transport Executive by any enactment (whenever passed or made) to be exercisable by a combined authority or the executive body of a combined authority in relation to the combined authority's area¹⁹.

The Secretary of State may by order make in relation to a combined authority any provision that may be made in relation to an EPB²⁰ as to the exercise of local authority functions²¹. The duty to perform functions with a view to promoting economic development and regeneration²² applies to the exercise of functions by a combined authority as it applies to the exercise of functions by an EPB²³. The Secretary of State may by order make in relation to a combined authority any provision that may be made as to funding²⁴ in relation to an EPB²⁵, but such an order may make such provision only in relation to the costs of a combined authority that are reasonably attributable to the exercise of its functions relating to economic development and regeneration²⁶.

1 As to the Secretary of State see PARA 802 and PARA 997 note 2.

2 Local Democracy, Economic Development and Construction Act 2009 s 103(1). As to the making of orders under Pt 6 (ss 88-120) see PARA 997 note 3.

3 As to the meaning of 'local government area' see PARA 997 note 5.

4 Local Democracy, Economic Development and Construction Act 2009 s 103(2).

5 Local Democracy, Economic Development and Construction Act 2009 s 103(3).

- 6 Local Democracy, Economic Development and Construction Act 2009 s 103(4).
- 7 As to the meaning of 'EPB' see PARA 997 note 4, and as to the area of an EPB see PARA 997.
- 8 Local Democracy, Economic Development and Construction Act 2009 s 103(5). As to integrated transport areas and authorities see **LOCAL GOVERNMENT** vol 69 (2009) PARA 49; **ROAD TRAFFIC**.
- 9 ie a scheme prepared and published under the Local Democracy, Economic Development and Construction Act 2009 s 109; see PARA 1004.
- 10 Local Democracy, Economic Development and Construction Act 2009 s 103(6).
- 11 Local Democracy, Economic Development and Construction Act 2009 s 103(7). The Local Transport Act 2008 s 97 (change of name of an Integrated Transport Authority (an 'ITA'): see **ROAD TRAFFIC**) applies to a combined authority as it applies to an ITA: Local Democracy, Economic Development and Construction Act 2009 s 104(4).
- 12 ie under the Local Transport Act 2008 s 84: see **ROAD TRAFFIC**. Section 85 (provision about membership of an ITA) applies to an order under the Local Democracy, Economic Development and Construction Act 2009 s 104(1) and to the combined authority to which that order applies, as it applies to an order under the Local Transport Act 2008 s 84 and the ITA to which that order applies: Local Democracy, Economic Development and Construction Act 2009 s 104(2).
- 13 ie under the Local Transport Act 2008 s 86: see **ROAD TRAFFIC**.
- 14 ie under the Local Transport Act 2008 s 87: see **ROAD TRAFFIC**.
- 15 ie under the Local Transport Act 2008 s 88: see **ROAD TRAFFIC**. The following provisions of that Act apply in relation to a combined authority on which functions of a kind described in s 88 are conferred as they apply in relation to an ITA on which such functions are conferred, ie: (1) s 88(10) (provisions about directions); (2) s 89(2), (3) (power to remedy contravention of direction): Local Democracy, Economic Development and Construction Act 2009 s 104(3).
- 16 Local Democracy, Economic Development and Construction Act 2009 s 104(1). 'ITA' has the meaning given by s 104(1): s 120.
- 17 Local Democracy, Economic Development and Construction Act 2009 s 104(5).
- 18 Local Democracy, Economic Development and Construction Act 2009 s 104(6).
- 19 Local Democracy, Economic Development and Construction Act 2009 s 104(7). An order under s 104(7) may make provision for any function that is conferred or imposed on an ITA by any enactment (whenever passed or made) and relates to the functions of a Passenger Transport Executive, to be exercisable by a combined authority in relation to the combined authority's area: Local Democracy, Economic Development and Construction Act 2009 s 104(8).
- 20 ie under the Local Democracy, Economic Development and Construction Act 2009 s 91: see PARA 997 text and notes 17-22.
- 21 Local Democracy, Economic Development and Construction Act 2009 s 105(1).
- 22 ie under the Local Democracy, Economic Development and Construction Act 2009 s 91(5): see PARA 997 text and note 22.
- 23 Local Democracy, Economic Development and Construction Act 2009 s 105(2).
- 24 ie under the Local Democracy, Economic Development and Construction Act 2009 s 92: see PARA 998.
- 25 Local Democracy, Economic Development and Construction Act 2009 s 105(3).
- 26 Local Democracy, Economic Development and Construction Act 2009 s 105(4).

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1003. Changes to boundaries and dissolution of area.

The Secretary of State¹ may by order change the boundaries of the area of a combined authority² by: (1) adding a local government area³ to an existing area of a combined authority; or (2) removing a local government area from an existing area of a combined authority⁴. Such an order may be made only if: (a) the area to be created by the order meets conditions A to D for the establishment of a combined authority⁵; and (b) each council to which these provisions apply⁶ consents to the making of the order⁷.

Where by virtue of an order an area ceases to be part of the area of a combined authority, the order: (i) must make provision for designating an authority⁸ to be a local transport authority for the area⁹; and (ii) may transfer functions to that authority from the combined authority that was formerly the local transport authority¹⁰. Such provision may designate different authorities for different parts of the area¹¹.

The Secretary of State may by order: (A) dissolve a combined authority's area; and (B) abolish the combined authority for that area¹². Such an order may be made only if a majority of the councils to which these provisions apply¹³ consent to the making of the order¹⁴. The order must make provision for designating an authority¹⁵ to be a local transport authority for the area that was previously the combined authority's area¹⁶ and may transfer functions to that authority from the combined authority that was formerly the local transport authority¹⁷. Such provision may designate different authorities for different parts of the area¹⁸.

1 As to the Secretary of State see PARA 802 and PARA 997 note 2.

2 As to the meaning of 'combined authority' see PARA 997 note 9, and as to the establishment of combined authorities and their areas see PARA 1002.

3 As to the meaning of 'local government area' see PARA 997 note 5.

4 Local Democracy, Economic Development and Construction Act 2009 s 106(1). As to the making of orders under Pt 6 (ss 88-120) see PARA 997 note 3.

5 Ie conditions A-D in the Local Democracy, Economic Development and Construction Act 2009 s 103: see PARA 1002 text to notes 3-8.

6 The Local Democracy, Economic Development and Construction Act 2009 s 106(2) applies to: (1) a county council whose area, or part of whose area, is to be added to or removed from the existing area of the combined authority; (2) a district council whose area is to be added to or removed from the existing area of the combined authority: s 106(3).

7 Local Democracy, Economic Development and Construction Act 2009 s 106(2).

8 The reference here to an authority does not include an ITA: Local Democracy, Economic Development and Construction Act 2009 s 106(6). As to the meaning of 'ITA' see PARA 1002 note 16.

9 Ie for the purposes of the Transport Act 2000 s 108(4): see **ROAD TRAFFIC** vol 40(3) (2007 Reissue) PARA 1190.

10 Local Democracy, Economic Development and Construction Act 2009 s 106(4). Section 106(4) does not apply if the area becomes part of the integrated transport area of an ITA by virtue of an order under the Local Transport Act 2008 s 78 or 90 (see **ROAD TRAFFIC**): Local Democracy, Economic Development and Construction Act 2009 s 106(7).

11 Local Democracy, Economic Development and Construction Act 2009 s 106(5).

12 Local Democracy, Economic Development and Construction Act 2009 s 107(1).

13 ie: (1) a county council whose area, or part of whose area, is within the combined authority's area; (2) a unitary district council whose area is within the combined authority's area: Local Democracy, Economic Development and Construction Act 2009 s 107(3). As to the meaning of 'unitary district council' see PARA 997 note 13.

14 Local Democracy, Economic Development and Construction Act 2009 s 107(2).

15 The reference here to an authority does not include an ITA: Local Democracy, Economic Development and Construction Act 2009 s 107(6).

16 ie for the purposes of the Transport Act 2000 s 108(4): see **ROAD TRAFFIC** vol 40(3) (2007 Reissue) PARA 1190.

17 Local Democracy, Economic Development and Construction Act 2009 s 107(4). Section 107(4) does not apply to a territory or part of a territory that becomes the integrated transport area or part of the integrated transport area of an ITA by virtue of an order under the Local Transport Act 2008 s 78 or 90 (see **ROAD TRAFFIC**): Local Democracy, Economic Development and Construction Act 2009 s 107(7).

18 Local Democracy, Economic Development and Construction Act 2009 s 107(5).

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1004. Requirements as to orders for establishment of combined authorities.

Any two or more of the authorities to which these provisions apply¹ may undertake a review of: (1) the effectiveness and efficiency of transport within the area covered by the review (the 'review area'); and (2) the effectiveness and efficiency of arrangements to promote economic development and regeneration within the review area². Where the review is being undertaken by a county council, the review area must include the areas of one or more district councils that are within the area of the county council or, if there are no such areas, the area of the county council³. Where the review is being undertaken by a district council, the review area must include the area of the district council⁴. Where the review is being undertaken by an EPB, the review area must include one or more local government areas⁵ within the EPB's area⁶. Where the review is being undertaken by an ITA, the review area must include one or more local government areas within the ITA's integrated transport area⁷. The review area may also include the area of any county council or district council in England that does not constitute or fall within the area of an authority undertaking the review⁸.

Where two or more of the authorities that have undertaken a review conclude that the establishment of a combined authority⁹ for an area would be likely to improve: (a) the exercise of statutory functions relating to transport in the area; (b) the effectiveness and efficiency of transport in the area; (c) the exercise of statutory functions relating to economic development and regeneration in the area; and (d) economic conditions in the area, the authorities may prepare and publish a scheme for the establishment of a combined authority for the area (the 'scheme area')¹⁰. Subject as follows, the scheme area: (i) must consist of or include the whole or any part of the review area; (ii) may include one or more other local government areas; (iii) must meet conditions A to C¹¹ for the establishment of a combined authority¹². The scheme area may not include a local government area unless each appropriate authority¹³ for that area either participates in the preparation of the scheme or consents to its inclusion in the scheme area¹⁴.

The Secretary of State¹⁵ may make an order establishing a combined authority for an area only if, having regard to a scheme prepared and published as above, the Secretary of State considers that to do so is likely to improve: (A) the exercise of statutory functions relating to transport in the area; (B) the effectiveness and efficiency of transport in the area; (C) the exercise of statutory functions relating to economic development and regeneration in the area; and (D) economic conditions in the area¹⁶. Before making the order, the Secretary of State must consult each appropriate authority¹⁷ and such other persons (if any) as the Secretary of State considers appropriate¹⁸. In making the order, the Secretary of State must have regard to the need to reflect the identities and interests of local communities and to secure effective and convenient local government¹⁹.

1 The Local Democracy, Economic Development and Construction Act 2009 s 108 applies to: (1) a county council in England; (2) a district council in England; (3) an EPB; (4) an ITA: s 108(2). As to the meaning of 'EPB' see PARA 997 note 4. As to the meaning of 'ITA' see PARA 1002 note 16.

2 Local Democracy, Economic Development and Construction Act 2009 s 108(1).

3 Local Democracy, Economic Development and Construction Act 2009 s 108(3).

4 Local Democracy, Economic Development and Construction Act 2009 s 108(4).

- 5 As to the meaning of 'local government area' see PARA 997 note 5.
- 6 Local Democracy, Economic Development and Construction Act 2009 s 108(5).
- 7 Local Democracy, Economic Development and Construction Act 2009 s 108(6).
- 8 Local Democracy, Economic Development and Construction Act 2009 s 108(7).
- 9 As to the meaning of 'combined authority' see PARA 997 note 9, and as to the establishment of combined authorities and their areas see PARA 1002.
- 10 Local Democracy, Economic Development and Construction Act 2009 s 109(1), (2).
- 11 The conditions A-C in the Local Democracy, Economic Development and Construction Act 2009 s 103: see PARA 1002 text to notes 3-6.
- 12 Local Democracy, Economic Development and Construction Act 2009 s 109(3).
- 13 For this purpose: (1) a county council is an appropriate authority for a local government area that is or forms part of the area of that county council; (2) a district council is an appropriate authority for a local government area that is the area of that district council: Local Democracy, Economic Development and Construction Act 2009 s 109(5).
- 14 Local Democracy, Economic Development and Construction Act 2009 s 109(4).
- 15 As to the Secretary of State see PARA 802 and PARA 997 note 2.
- 16 Local Democracy, Economic Development and Construction Act 2009 s 110(1). As to the making of orders under Pt 6 (ss 88-120) see PARA 997 note 3.
- 17 For these purposes: (1) a county council is an appropriate authority if the area of the county council, or part of that area, is within the area for which the combined authority is to be established; (2) a district council is an appropriate authority if the area of the district council is within the area for which the combined authority is to be established; (3) an EPB is an appropriate authority if the EPB's area, or part of its area, is within the area for which the combined authority is to be established; (4) an ITA is an appropriate authority if the ITA's integrated transport area, or part of that area, is within the area for which the combined authority is to be established: Local Democracy, Economic Development and Construction Act 2009 s 110(3).
- 18 Local Democracy, Economic Development and Construction Act 2009 s 110(2).
- 19 Local Democracy, Economic Development and Construction Act 2009 s 110(4).

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1005. Review of existing combined authorities.

Any one or more of the authorities to which these provisions apply¹ may undertake, in relation to an existing combined authority, a review of one or more combined matters². The review must relate to one or more areas of a combined authority or proposed areas of a combined authority³.

Where one or more of the authorities that have undertaken a review conclude that the exercise of the power to make an order in relation to a combined authority⁴ would be likely to improve: (1) the exercise of statutory functions relating to transport in an area of a combined authority⁵ or a proposed area of a combined authority; (2) the effectiveness and efficiency of transport in such an area; (3) the exercise of statutory functions relating to economic development and regeneration in such an area; or (4) economic conditions in such an area, the authorities may prepare and publish a scheme relating to the exercise of the power or powers in question⁶.

The Secretary of State⁷ may make an order⁸ in relation to an existing combined authority only if, having regard to a scheme⁹, the Secretary of State considers that the making of the order is likely to improve: (a) the exercise of statutory functions relating to transport in the area or areas to which the order relates; (b) the effectiveness and efficiency of transport in that area or those areas; (c) the exercise of statutory functions relating to economic development and regeneration in that area or those areas; or (d) economic conditions in that area or those areas¹⁰. Before making the order, the Secretary of State must consult such of the relevant authorities¹¹, and such other persons (if any), as the Secretary of State considers appropriate¹². In making the order, the Secretary of State must have regard to the need to reflect the identities and interests of local communities and to secure effective and convenient local government¹³.

1 The Local Democracy, Economic Development and Construction Act 2009 s 111 applies to: (1) a combined authority; (2) a county council whose area, or part of whose area, is within an area of a combined authority or could be within a proposed area of a combined authority; (3) a district council whose area is within an area of a combined authority or could be within a proposed area of a combined authority: s 111(2). As to the meaning of 'combined authority' see PARA 997 note 9, and as to the establishment of combined authorities and their areas see PARA 1002. In ss 111, 112 a 'proposed area of a combined authority' means an area of a combined authority that may be created by an order under s 106 (changes to boundaries of a combined authority's area: see PARA 1003 text and notes 1-7): s 111(5).

2 Local Democracy, Economic Development and Construction Act 2009 s 111(1). For the purposes of s 111 a 'combined matter': is: (1) a matter in relation to which an order may be made under any of ss 104-107 (see PARAS 1002-1003); (2) in relation to the combined authority or any executive body of the combined authority, where that body exists at the time of the review, a matter concerning the combined authority or the executive body that the combined authority has power to determine: s 111(3).

3 Local Democracy, Economic Development and Construction Act 2009 s 111(4).

4 Ie under any one or more of the Local Democracy, Economic Development and Construction Act 2009 ss 104-107.

5 The reference here to an area of a combined authority includes an area that would cease to be an area of a combined authority if an order were made in relation to that area under s 107 (dissolution of a combined authority's area: see PARA 1003 text and notes 12-18): Local Democracy, Economic Development and Construction Act 2009 s 112(3).

- 6 Local Democracy, Economic Development and Construction Act 2009 s 112(1), (2).
- 7 As to the Secretary of State see PARA 802 and PARA 997 note 2.
- 8 le under any of the Local Democracy, Economic Development and Construction Act 2009 ss 104-107. As to the making of orders under Pt 6 (ss 88-120) see PARA 997 note 3.
- 9 le a scheme prepared and published under the Local Democracy, Economic Development and Construction Act 2009 s 112.
- 10 Local Democracy, Economic Development and Construction Act 2009 s 113(1).
- 11 le the authorities mentioned in the Local Democracy, Economic Development and Construction Act 2009 s 111(2); see note 1.
- 12 Local Democracy, Economic Development and Construction Act 2009 s 113(2).
- 13 Local Democracy, Economic Development and Construction Act 2009 s 113(3).

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(iii) Orders and Guidance

1006. Additional provisions which may be made in orders.

The Secretary of State¹ may by order² make incidental, consequential, transitional or supplementary provision for the purposes of, or in consequence of, an order under Part 6 of the Local Democracy, Economic Development and Construction Act 2009 or for giving full effect to such an order³. Such an order may include provision amending, applying (with or without modifications), disapplying, repealing or revoking any enactment, whenever passed or made⁴, but such an order may not include provision amending or disapplying the statutory provisions⁵ as to political balance on local authority committees etc⁶.

The Secretary of State may by order make such provision as the Secretary of State considers appropriate in consequence of any provision made by Part 6 of the 2009 Act⁷.

1 As to the Secretary of State see PARA 802 and PARA 997 note 2.

2 As to the making of orders under Pt 6 (ss 88-120) see PARA 997 note 3.

3 Local Democracy, Economic Development and Construction Act 2009 s 114(1).

4 Local Democracy, Economic Development and Construction Act 2009 s 114(2). The provision that may be included by virtue of s 114(2) includes provision applying, with modifications, or disapplying any enactment amended by Sch 6: s 114(3).

5 ie the Local Government and Housing Act 1989 ss 15-17, Sch 1: see **LOCAL GOVERNMENT** vol 69 (2009) PARAS 375-377.

6 Local Democracy, Economic Development and Construction Act 2009 s 114(4).

7 Local Democracy, Economic Development and Construction Act 2009 s 116(1). The power conferred in s 116(1) includes power to amend, repeal or revoke provision contained in an enactment passed or made before the day on which the 2009 Act is passed (ie 12 November 2009): s 116(2). See also PARA 997 note 3.

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1007. Transfer of property rights and liabilities.

The Secretary of State¹ may by order² make provision for the transfer of property, rights and liabilities for the purposes of, or in consequence of, an order under Part 6 of the Local Democracy, Economic Development and Construction Act 2009 or for giving full effect to such an order³. Property, rights and liabilities may be transferred by: (1) the order; (2) a scheme made by the Secretary of State under the order; or (3) a scheme required to be made under the order by a person other than the Secretary of State⁴. A transfer by virtue of these provisions may have effect: (a) whether or not the property, rights and liabilities would otherwise be capable of being transferred; (b) without any instrument or formality being required⁵. The rights and liabilities which may be transferred include rights and liabilities in relation to a contract of employment⁶.

An order or a scheme made under it may define the property, rights and liabilities to be transferred by specifying or describing them⁷. Provision for the transfer of property, rights and liabilities made by virtue of these provisions may include provision: (i) for the creation or imposition by the Secretary of State of new rights or liabilities in respect of anything transferred; (ii) for the shared ownership or use of any property or facilities; (iii) for the management or custody of transferred property; (iv) for bodies to make agreements with respect to any property, income, rights, liabilities and expenses of, and any financial relations between, the parties to the agreement⁸. Provision for the transfer of property, rights and liabilities may include provision: (A) for the continuing effect of things done by the transferor in relation to anything transferred; (B) for the continuation of things (including legal proceedings) in the process of being done, by or on behalf of or in relation to the transferor in relation to anything transferred; (c) for references to the transferor in any agreement (whether written or not), instrument or other document in relation to anything transferred to be treated (so far as necessary for the purposes of or in consequence of the transfer) as references to the transferee⁹.

1 As to the Secretary of State see PARA 802 and PARA 997 note 2.

2 As to the making of orders under Pt 6 (ss 88-120) see PARA 997 note 3.

3 Local Democracy, Economic Development and Construction Act 2009 s 115(1).

4 Local Democracy, Economic Development and Construction Act 2009 s 115(2).

5 Local Democracy, Economic Development and Construction Act 2009 s 115(3).

6 Local Democracy, Economic Development and Construction Act 2009 s 115(4). The Transfer of Undertakings (Protection of Employment) Regulations 2006, SI 2006/246 (see EMPLOYMENT vol 39 (2009) PARA 111 et seq), apply to the transfer by virtue of these provisions (whether or not the transfer is a relevant transfer for the purposes of those regulations): Local Democracy, Economic Development and Construction Act 2009 s 115(5).

7 Local Democracy, Economic Development and Construction Act 2009 s 115(6).

8 Local Democracy, Economic Development and Construction Act 2009 s 115(7).

9 Local Democracy, Economic Development and Construction Act 2009 s 115(8).

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PROMOTION OF TRADE AND ASSISTANCE TO INDUSTRY/(5) ECONOMIC PROSPERITY BOARDS
AND COMBINED AUTHORITIES/(iii) Orders and Guidance/1008. Guidance by Secretary of State.

1008. Guidance by Secretary of State.

The Secretary of State¹ may give guidance about anything that could be done by an authority to which these provisions apply² under or by virtue of Part 6³ of the Local Democracy, Economic Development and Construction Act 2009⁴. The authority must have regard to any such guidance in exercising any function conferred or imposed by or by virtue of Part 6⁵. Any guidance must be given in writing and may be varied or revoked by further guidance in writing⁶. Any such guidance may make different provision for different cases and different provision for different areas⁷.

1 As to the Secretary of State see PARA 802 and PARA 997 note 2.

2 The Local Democracy, Economic Development and Construction Act 2009 s 118 applies to: (1) a county council; (2) a district council; (3) an EPB; (4) an ITA; (5) a combined authority: s 118(5). As to the meaning of 'EPB' see PARA 997 note 4; as to the meaning of 'ITA' see PARA 1002 note 16; and as to the meaning of 'combined authority' see PARA 997 note 9. See further PARAS 997 et seq, 1002 et seq.

3 In the Local Democracy, Economic Development and Construction Act 2009 Pt 6 (ss 88-120): see PARA 997 et seq.

4 Local Democracy, Economic Development and Construction Act 2009 s 118(1).

5 Local Democracy, Economic Development and Construction Act 2009 s 118(2).

6 Local Democracy, Economic Development and Construction Act 2009 s 118(3).

7 Local Democracy, Economic Development and Construction Act 2009 s 118(4).

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STATISTICS/(1) INFORMATION AND CENSUS/1009. Returns and estimates.

5. STATISTICS

(1) INFORMATION AND CENSUS

1009. Returns and estimates.

In order to obtain information necessary to appreciate economic trends, to provide a statistical service for industry and to provide for the discharge by government departments of their functions, a competent authority¹, by notice in writing served on any person² carrying on an undertaking³, may require that person to furnish, in such form and manner and within such time as may be specified in the notice, periodical or other estimates or returns about certain matters⁴. Those matters are:

- 267 (1) the nature of the undertaking (including its association with other undertakings) and the date of its acquisition;
- 268 (2) the persons employed or normally employed (including working proprietors), the nature of their employment, their remuneration and the hours worked;
- 269 (3) the output, sales, deliveries and services provided;
- 270 (4) the articles acquired or used, orders, stocks and work in progress;
- 271 (5) the outgoings and costs (including work given out to contractors, depreciation, rent, rates and taxes, other than taxes on profits) and capital expenditure;
- 272 (6) the receipts of and debts owed to the undertaking;
- 273 (7) the power used or generated;
- 274 (8) the fixed capital assets, the plant, including the acquisition and disposal of those assets and that plant, and the premises occupied;
- 275 (9) assets (other than fixed capital assets) and liabilities of the undertaking, including the acquisition and disposal of those assets and the incurring and discharge of those liabilities;
- 276 (10) prices of articles and services;
- 277 (11) income (including rents, interest and investment income) received or receivable by the undertaking;
- 278 (12) dividends and interest paid or payable;
- 279 (13) profits and losses;
- 280 (14) taxes paid or chargeable on income or gains;
- 281 (15) services acquired or used⁵.

The Secretary of State⁶ may, by notice, require a trader⁷ concerned with an essential commodity⁸ to make periodical and other returns, at such times and containing such particulars as are specified in the notice, as to the stocks of the commodity held by him and as to the facilities available for storing and utilising stocks of the commodity⁹. If so required by the Secretary of State, any government department or body of persons having power by virtue of any Act to obtain information as to such matters must exercise that power for the purpose of assisting him to obtain information regarding essential commodities¹⁰.

¹ Each of the following ministers and authorities is a competent authority: the Treasury, the Chancellor of the Exchequer, a Secretary of State, and the Board of Trade: Statistics of Trade Act 1947 s 17(3) (substituted by SI 1971/719; and amended by SI 1989/992). All functions of the Minister of Agriculture, Fisheries and Food

(mentioned in the Statistics of trade Act 1947 s 17(3) as a competent authority) are transferred to the Secretary of State for Environment, Food and Rural Affairs see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. Functions under s 1(1), so far as exercisable by the Chancellor of the Exchequer concurrently with the Board of Trade and the Secretary of State, and concurrently with the Secretary of State as a competent authority, are delegated to the Statistics Board, by the Statistics and Registration Service Act 2007 (Delegation of Functions) (Economic Statistics) Order 2008, SI 2008/792, arts 3, 4(a), 5. For the purposes of the Statistics of Trade Act 1947, Scottish Enterprise and Highlands and Islands Enterprise are each a competent authority: Enterprise and New Towns (Scotland) Act 1990 s 12(1).

2 The notice must state that it is served under the Statistics of Trade Act 1947 s 1 and generally the purpose for which the estimates or returns are required: s 1(2). Unless the contrary intention appears, 'person' includes a body of persons corporate or unincorporate: see the Interpretation Act 1978 s 5, Sch 1.

3 'Undertaking' means any undertaking by way of trade or business, whether or not the trade or business is carried on for profit; and the exercise and performance by a local or other public authority of the powers and duties of that authority must be treated as a trade or business of that authority: Statistics of Trade Act 1947 s 17(1). Where an undertaking is wholly or partly carried on by means of branches situated at several premises, the competent authority may agree with the persons carrying on the undertaking that for the purposes of the Statistics of Trade Act 1947 a separate undertaking is to be deemed to be carried on at all or any of those branches by the branch manager or a specified person; any such agreement: (1) may contain such supplemental provisions as may be expedient for giving effect to it; (2) continues in force for a specified term; and (3) is subject to any provisions as to variation and revocation specified in the agreement: s 17(2).

4 Statistics of Trade Act 1947 s 1(1).

5 Statistics of Trade Act 1947 s 1(1), Schedule (amended by SI 1963/1329; 1987, SI 1987/669; and 1990/2597). The amendments were made by orders under the Statistics of Trade Act 1947 s 5, which gives a general power to amend the Schedule, subject to the approval of each House of Parliament. In a case where the undertaking is related to a body situated outside the United Kingdom the following information may also be required: (1) the nature and the extent of the relationship; (2) the nature and extent (and any changes therein) of the financial interest of the one body in the other; (3) the country in which the related body is situated; (4) particulars in respect of issued share capital, minority share-holders' interests, loans, reserves and provisions as recorded in the accounts of the undertaking or such particulars in respect of the related body where it is under the control of the undertaking; (5) net gains or losses of the undertaking attributable to changes in exchange rates, being gains or losses arising out of the relationship; (6) the profit or loss of the undertaking or related body attributable to the relationship and dividends declared by either body arising out of the relationship; (7) where the body is not a company incorporated in the United Kingdom, its net value to the related body, and where the related body is not a body corporate, its net value to the undertaking: Schedule (as so amended). As to the meaning of 'United Kingdom' see PARA 806 note 7.

6 For these purposes the 'Secretary of State' is the Secretary of State for Business, Innovation and Skills, to whom the functions of the Board of Trade were transferred: see PARA 803 note 2.

7 For these purposes 'trader' in relation to any commodity means any person who for the purposes of any trade or business carried on by him, whether as a producer, merchant, broker, warehouseman or otherwise, holds from time to time a stock of that commodity: Essential Commodities Reserves Act 1938 s 6.

8 'Essential commodity' means any commodity which may be declared by order of the Secretary of State to be a commodity which, in his opinion, would be essential for the vital needs of the community in the event of war: Essential Commodities Reserves Act 1938 s 6. Any commodity which, in the opinion of the Secretary of State, may be required as food for man, forage for animals or fertiliser for land, any raw material from which any such commodity can be produced, and petroleum and any product of petroleum, may be declared to be such a commodity: s 6, Schedule. See the Essential Commodities Reserves (Declaration) Order 1938, SR & O 1938/1110.

9 Essential Commodities Reserves Act 1938 s 1(1).

10 See the Essential Commodities Reserves Act 1938 s 1(2). Any such information obtained by any government department or by any such body of persons, whether upon the requisition of the Secretary of State or otherwise, may, notwithstanding anything in any enactment, be furnished to him: s 1(2). The Secretary of State is given the power to make payments to traders for the purpose of augmenting or maintaining stocks of essential commodities, or the improvement of storage facilities: see s 2(1). Additionally, the Secretary of State may acquire and store such stocks and take various steps in relation to them: see s 2(2), (3).

Halsbury's Laws of England/TRADE AND INDUSTRY (VOLUME 97 (2010) 5TH EDITION)/5.
STATISTICS/(1) INFORMATION AND CENSUS/1010. Census of production and distribution.

1010. Census of production and distribution.

For the purpose of providing, at intervals, general surveys of the state of trade and business, the Secretary of State¹ must in each year take a census of production, and may in any year² prescribed by order take a census of distribution and other services³. Any person⁴ carrying on an undertaking may be required to furnish returns⁵ for the purpose of any census⁶. A census must require returns to be furnished with respect to the calendar year next preceding the date of the census⁷, unless the Secretary of State permits a person for whom it would be inconvenient to furnish returns with respect to that calendar year to furnish returns with respect to some other period of 12 months⁸.

1 The functions of the Secretary of State under the Statistics of Trade Act 1947 ss 2, 3, 6, 7, 8, 9(2), (3), 10, 11 and 17(2) (see text to notes 2-8 and PARA 1011) and the functions of the Secretary of State as a competent authority within the meaning of that Act (see PARA 1009 note 1) are transferred to the Chancellor of the Exchequer, so as to be exercisable concurrently with him, by the Transfer of Functions (Economic Statistics) Order 1989, SI 1989/992, art 2(1), (2). Functions under the Statistics of Trade Act 1947 ss 2(1), (4), 3(1), (2), 6(1), 7, 8(1), (2) and 17(2), so far as exercisable by the Chancellor of the Exchequer concurrently with the Board of Trade and the Secretary of State, and concurrently with the Secretary of State as a competent authority, are delegated to the Statistics Board by the Statistics and Registration Service Act 2007 (Delegation of Functions) (Economic Statistics) Order 2008, SI 2008/792, arts 3, 4(b)-(g), (c), 5, 6.

2 Ie a calendar year beginning not less than 12 months after the date of the order: see the Statistics of Trade Act 1947 s 2(1). As to the making of orders see PARA 1023.

3 Statistics of Trade Act 1947 s 2(1). Individual orders made under s 2(1) prescribed certain years for each census: see eg the Census of Production Order 1993, SI 1993/3037, relating to the census of production to be taken in 1994 and in subsequent years and prescribing the undertaking to which the census is confined and the matters to which returns relate and providing for the exemption of certain persons. The census may either: (1) be taken to cover all undertakings in the field of production, distribution or other services, as the case may be; or (2) be confined to such classes or descriptions of those undertakings respectively as may be prescribed: Statistics of Trade Act 1947 s 2(2). The Secretary of State may by order provide for exempting from the obligation to furnish returns for the purpose of a census, either wholly or to the prescribed extent, and either unconditionally or subject to prescribed conditions, any persons or any prescribed class or description of persons: 2(2). See eg the Census of Production Order 1993, SI 1993/3037, exempting persons carrying on certain activities relating to the extraction of crude petroleum and natural gas: see arts 4, 5. As to the meaning of 'undertaking' see PARA 1009 note 3.

4 As to the meaning of 'person' see PARA 1009 note 2.

5 The matters about which a person may be required to furnish returns for the purposes of a census are such of the matters set out in the Statistics of Trade Act 1947 Schedule (see PARA 1009 note 5) as may be prescribed: s 2(3).

6 Statistics of Trade Act 1947 s 2(2).

7 Statistics of Trade Act 1947 s 2(4).

8 Statistics of Trade Act 1947 s 2(4) proviso.

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STATISTICS/(1) INFORMATION AND CENSUS/1011. Census forms and instructions.

1011. Census forms and instructions.

The Secretary of State¹ must prepare and issue such forms and instructions as he deems necessary for the taking of a census of production or of distribution and other services². A person³ is not required to furnish returns for these purposes except in pursuance of a notice in writing from the Secretary of State requiring him to do so; and the Secretary of State must issue, with the notice, the forms required to be filled up by that person⁴. The Secretary of State may delegate any of these functions to any other competent authority⁵. A person required to furnish returns must comply with the notice, in such manner as may be specified in the notice, on or before a day so specified being not less than two months after the service of the notice⁶.

1 As to the Secretary of State see PARA 803 note 2. As to the transfer of functions to the Chancellor of the Exchequer see PARA 1010 note 1.

2 Statistics of Trade Act 1947 s 3(1).

3 As to the meaning of 'person' see PARA 1009 note 2

4 Statistics of Trade Act 1947 s 3(2).

5 Statistics of Trade Act 1947 s 3(3). As to the meaning of 'competent authority' see PARA 1009 note 1. On delegation, references to the Secretary of State include references to any other authority to whom the functions have been delegated and a notice issued by a competent authority in pursuance of powers delegated to that authority must state that it is so issued: s 3(3).

6 Statistics of Trade Act 1947 s 3(4). In their application to a person who has been allowed to furnish returns with respect to a period ending not later than 31 October in the calendar year preceding the date on which the notice is served on him, the provisions of s 3(4) have effect as if for the reference to two months there is substituted a reference to one month: s 3(4) proviso. As to the service of notices see PARA 1024.

Halsbury's Laws of England/TRADE AND INDUSTRY (VOLUME 97 (2010) 5TH EDITION)/5.
STATISTICS/(1) INFORMATION AND CENSUS/1012. Lists of undertakings subject to census.

1012. Lists of undertakings subject to census.

The Secretary of State¹ or any competent authority² to which he has delegated the function³ may by advertisement in the Gazette⁴ and in such newspapers as appear to him to be sufficient for notifying the persons⁵ concerned, publish a list of any classes or descriptions of undertakings⁶ in relation to which returns will be required for the purposes of a particular census of production or distribution and other services⁷. Upon such publication it is the duty of every person carrying on an undertaking of any specified class or description who has not received a notice requiring him to furnish returns⁸, both to inform a person specified in the advertisement within a specified period (being not less than at days after the publication) that he is carrying on such an undertaking, and to give to that person such prescribed particulars of the undertaking as are so specified⁹.

1 As to the Secretary of State see PARA 803 note 2. As to the transfer of functions to the Chancellor of the Exchequer see PARA 1010 note 1.

2 As to the meaning of 'competent authority' see PARA 1009 note 1.

3 The Secretary of State may delegate any of his functions under the Statistics of Trade Act 1947 s 6(1) to any other competent authority, and references in s 6(1) to the Secretary of State include references to any competent authority to whom those functions have been so delegated: s 6(2).

4 The 'Gazette' means: (1) in relation to an advertisement concerning undertakings in England and Wales only, the London gazette; (2) in relation to an advertisement concerning undertakings in Scotland only, the Edinburgh Gazette; and (3) in relation to any other advertisement, the London Gazette and the Edinburgh Gazette: Statistics of Trade Act 1947 s 6(5).

5 As to the meaning of 'person' see PARA 1009 note 2.

6 As to the meaning of 'undertaking' see PARA 1009 note 3.

7 Statistics of Trade Act 1947 s 6(1).

8 Ie a notice under the Statistics of Trade Act 1947 s 3(2): see PARA 1011.

9 Statistics of Trade Act 1947 s 6(1). As to offences of failing to give such information or particulars or giving false information or particulars see s 6(3), (4); and PARA 1015.

Halsbury's Laws of England/TRADE AND INDUSTRY (VOLUME 97 (2010) 5TH EDITION)/5.
STATISTICS/(1) INFORMATION AND CENSUS/1013. Information from air travellers.

1013. Information from air travellers.

The Secretary of State¹ may by order make provision whereby any person entering or leaving the United Kingdom² by air may be required to give³ particulars of his age, sex and marriage or civil partnership, of the nature of his occupation and of the country in which he last permanently resided and that in which he intends next permanently to reside⁴. If it is not reasonably practicable to require any such person to give the particulars, any other person in whose company and under whose care he is travelling may be required to give the particulars on his behalf⁵.

1 As to the Secretary of State see PARA 803 note 2. As to the transfer of functions to the Chancellor of the Exchequer see PARA 1010 note 1.

2 As to the meaning of 'United Kingdom' see PARA 806 note 7.

3 Ie to give to such persons and in such form and manner as may be prescribed by order made by the Secretary of State: Statistics of Trade Act 1947 ss 10(1), 11.

4 Statistics of Trade Act 1947 s 10(1) (amended by the Civil Partnership Act 2004 s 261(1), Sch 27 para 12). At the date at which this volume states the law no such order had been made.

5 Statistics of Trade Act 1947 s 10(2). As to offences of failing to give such information or particulars or giving false information or particulars see s 10(3), (4); and PARA 1015.

Halsbury's Laws of England/TRADE AND INDUSTRY (VOLUME 97 (2010) 5TH EDITION)/5.
STATISTICS/(1) INFORMATION AND CENSUS/1014. Trading of goods between member states.

1014. Trading of goods between member states.

Provision is made for the collection of statistics relating to the trading of goods between member states of the European Union. Such statistics are compiled by means of a statistical collection system known as 'Intrastat' from VAT returns and supplementary declarations made by VAT registered traders who are engaged in the trading of goods between member states¹.

¹ See the Statistics of Trade (Customs and Excise) Regulations 1992, SI 1992/2790 (amended by SI 1993/541; SI 1993/3015; SI 1997/2864; SI 2000/3227; SI 2004/3284; SI 2006/3216; SI 2008/557; SI 2008/2847).

Halsbury's Laws of England/TRADE AND INDUSTRY (VOLUME 97 (2010) 5TH EDITION)/5. STATISTICS/(2) OFFENCES AND DISCLOSURE/1015. Failure to give information, and giving false information.

(2) OFFENCES AND DISCLOSURE

1015. Failure to give information, and giving false information.

It is an offence for any person¹ to make a default in making any return or furnishing any information which he is duly required to make or furnish under the Essential Commodities Reserves Act 1938². It is also an offence for any person knowingly or recklessly to make a false return or furnish false information or, for the purpose of obtaining any payment under that Act, knowingly or recklessly to make an untrue statement or untrue representation³.

It is an offence for any person required to furnish estimates or returns under the Statistics of Trade Act 1947 to fail to furnish such estimates or returns unless he proves that he has reasonable excuse for the failure⁴. It is also an offence: (1) knowingly or recklessly to make a statement in estimates or returns which is false in a material particular⁵; (2) for any person to fail to give any information or particulars required by the Secretary of State when he has advertised his requirements, unless the person can prove that he did not know and had reasonable cause for not knowing that he was required to give that information or those particulars⁶; and (3) knowingly or recklessly to make a statement in any such particulars which is false in a material particular⁷. Where any person is required to give information on entering or leaving the United Kingdom⁸, it is an offence to fail to comply with that requirement unless he proves that he had reasonable excuse for the failure⁹. It is also an offence if any person in purported compliance with that requirement knowingly or recklessly makes any statement which is false in a material particular¹⁰.

1 As to the meaning of 'person' see PARA 1009 note 2.

2 Essential Commodities Reserves Act 1938 s 4(1). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 4(1) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). If after being so convicted a person continues to make the like default, he is guilty of a further offence and is liable on summary conviction to a fine not exceeding £50 for each day on which the default continues: Essential Commodities Reserves Act 1938 s 4(1). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142. As to the liability of officers of bodies corporate convicted of such offences see PARA 1016.

3 Essential Commodities Reserves Act 1938 s 4(2). It is irrelevant whether the purpose of the person making the statement or representation is to obtain payment for himself or any other person: see s 4(2). A person guilty of such an offence is, in respect of each offence, liable on summary conviction to a fine not exceeding level 3 on the standard scale or to imprisonment for a term not exceeding three months, or to both: see s 4(2) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46; and, as from a day to be appointed, by the Criminal Justice Act 2003 s 332, Sch 37 Pt 9, so as to remove the penalty of imprisonment; at the date at which this volume states the law, no such day had been appointed).

4 Statistics of Trade Act 1947 s 4(1). A person guilty of such an offence under s 4(1) is liable on summary conviction to a fine not exceeding level 4 on the standard scale: s 4(1) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). If after being so convicted a person continues to fail to furnish estimates or returns he is guilty of a further offence and will on summary conviction be punished accordingly: Statistics of Trade Act 1947 s 4(2).

5 Statistics of Trade Act 1947 s 4(3). If a person is guilty of such an offence he is liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding the prescribed sum, or on conviction on indictment to imprisonment for a term not exceeding two years or to a fine, or in either case, to both: Statistics of Trade Act 1947 s 4(3) (amended by virtue of the Magistrates' Courts Act 1980 s 32(2)). As to the prescribed sum see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 141.

6 Statistics of Trade Act 1947 s 6(3). If a person is guilty of such an offence he is liable on summary conviction to a fine not exceeding level 1 on the standard scale: s 6(3) (amended by virtue of the Criminal Justice Act 1982 s 46).

7 Statistics of Trade Act 1947 s 6(4). If a person is guilty of such an offence he is liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding the prescribed sum, or on conviction on indictment to imprisonment for a term not exceeding two years or a fine, or, in either case, to both: s 6(4) (amended by virtue of the Magistrates' Courts Act 1980 s 32(2)).

8 *Ie* by virtue of the Statistics of Trade Act 1947 s 10(1); see PARA 1013. As to the meaning of 'United Kingdom' see PARA 806 note 7.

9 Statistics of Trade Act 1947 s 10(3). If a person is guilty of such an offence he is liable on summary conviction to a fine not exceeding level 2 on the standard scale: s 10(3) (amended by virtue of the Criminal Justice Act 1982 s 46).

10 Statistics of Trade Act 1947 s 10(4). If a person is guilty of such an offence he is liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding the prescribed sum, or on conviction on indictment to imprisonment for a term not exceeding two years or to a fine of any amount, or, in either case, to both such imprisonment and such fine: s 10(4) (amended by virtue of the Criminal Law Act 1977 s 32(1); and the Magistrates' Courts Act 1980 s 32(2)).

Halsbury's Laws of England/TRADE AND INDUSTRY (VOLUME 97 (2010) 5TH EDITION)/5. STATISTICS/(2) OFFENCES AND DISCLOSURE/1016. Offences committed by a body corporate.

1016. Offences committed by a body corporate.

Where an offence under the Statistics of Trade Act 1947¹ has been committed by a body corporate, every person who at the time of the commission of the offence was a director, general manager, secretary or other similar officer of that body, or was purporting to act in any such capacity, is deemed to be guilty of the offence unless he proves that it was committed without his consent or connivance and that he exercised all such diligence to prevent its commission as he ought to have exercised having regard to the nature of his functions in that capacity and to all the circumstances². Where an offence under the Essential Commodities Reserves Act 1938³ has been committed by a body corporate and it is proved to have been committed with the consent or approval of, or to have been facilitated by any negligence on the part of any director, manager, secretary or other officer of that body, he, as well as the body corporate, is deemed to be guilty of the offence and is liable to be proceeded against and punished accordingly⁴.

1 The offences committed under the Statistics of Trade Act 1947 ss 4, 6(3), 9(6), 10(3), (4): see PARAS 1015, 1017. An offence committed under s 10 (see PARAS 1013, 1015) is inapplicable to a body corporate. Where a person convicted is a body corporate, such of the above provisions as limit the amount of the fine which may be imposed do not apply, and the body corporate is liable to a fine of such amount as the court thinks just: s 13(1); cf the Criminal Law Act 1977 s 32(1); and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1673 note 4.

2 Statistics of Trade Act 1947 s 13(2).

3 As to these offences see PARA 1015.

4 Essential Commodities Reserves Act 1938 s 4(3).

Halsbury's Laws of England/TRADE AND INDUSTRY (VOLUME 97 (2010) 5TH EDITION)/5. STATISTICS/(2) OFFENCES AND DISCLOSURE/1017. Unlawful disclosure of information.

1017. Unlawful disclosure of information.

It is an offence to disclose information with respect to any particular undertaking obtained under or by virtue of the Essential Commodities Reserves Act 1938 without the consent of the person carrying on that undertaking otherwise than in pursuance of the performance by the Secretary of State¹ of his functions under that Act, unless such disclosure is made for the purposes of any legal proceedings which may be taken under, by virtue of or in consequence of that Act².

It is an offence to disclose any individual estimates, returns or any information relating to an individual undertaking³ obtained under the Statistics of Trade Act 1947 without the previous consent in writing of the person carrying on the undertaking which is the subject of the estimates, returns or information, except either in accordance with directions given by the minister in charge of the government department in possession of the estimates, returns or information to a government department for the purposes of the exercise of its functions, or for the purposes of any proceedings for an offence under that Act or any report of those proceedings⁴.

1 As to the Secretary of State and the transfer to him of the functions of the Board of Trade see PARA 802 note 1. As to the transfer of functions to the Chancellor of the Exchequer see PARA 1010 note 1. Functions under the Statistics of Trade Act 1947 ss 9(1), 9A, so far as exercisable by the Chancellor of the Exchequer for the disclosing of information obtained under that Act, are transferred to the Statistics Board by the Statistics and Registration Service Act 2007 (Delegation of Functions) (Economic Statistics) Order 2008, SI 2008/792, art 6.

2 Essential Commodities Reserves Act 1938 s 1(3). If a person is guilty of such an offence under s 1(3), he is liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding the prescribed sum, or on conviction on indictment to imprisonment for a term not exceeding two years or to a fine, or in either case, to both: see s 1(3) (amended by virtue of the Criminal Law Act 1977 s 32(1); and the Magistrates' Courts Act 1980 s 32(2), (9)). As to the prescribed sum see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 141.

3 As to the meaning of 'undertaking' see PARA 1009 note 3.

4 Statistics of Trade Act 1947 s 9(1), (6) (amended by the Import Duties Act 1958 s 16(4), Sch 7 (repealed); and by SI 1999/1820). If a person is guilty of such an offence he is liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding the prescribed sum, or on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or, in either case, to both: Statistics of Trade Act 1947 s 9(6) (amended by virtue of the Magistrates' Courts Act 1980 s 32(2); and the Criminal Law Act 1977 s 32(1)). Detailed exemptions from the duty not to disclose are enacted in respect of: (1) European Union (EU) institutions (see the European Communities Act 1972 s 12); (2) certain bodies performing functions under the Employment and Training Act 1973 s 4(3)-(5) (see **EMPLOYMENT** vol 40 (2009) PARA 564); (3) the Health and Safety Executive (see the Health and Safety at Work etc Act 1974 s 27; and **HEALTH AND SAFETY AT WORK** vol 52 (2009) PARA 369); (4) the Advisory, Conciliation and Arbitration Service (see the Trade Union and Labour Relations (Consolidation) Act 1992 s 247(5); and **EMPLOYMENT** vol 41 (2009) PARA 1182); and (5) the Environment Agency (see the Statistics of Trade Act 1947 s 9A (added by the Environment Act 1995 s 120(1), Sch 22 para 2)). As to ACAS see **EMPLOYMENT** vol 41 (2009) PARAS 1182-1193. As to the Environment Agency see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 68 et seq. As to unauthorised disclosure of information provided by member states to the Statistical Office of the European Union ('Eurostat') see PARA 1018.

Halsbury's Laws of England/TRADE AND INDUSTRY (VOLUME 97 (2010) 5TH EDITION)/5. STATISTICS/(2) OFFENCES AND DISCLOSURE/1018. Disclosure of information provided to the Statistical Office of the European Union.

1018. Disclosure of information provided to the Statistical Office of the European Union.

It is an offence for an officer or employee of the Statistical Office of the European Union ('Eurostat')¹ or any individual who, under a contract for services with Eurostat, is required to carry out duties on its premises, knowingly or recklessly to disclose within Great Britain² confidential statistical information without the authority of the member state who provided that information. If a person is guilty of such an offence he is liable on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding the statutory maximum, or on conviction on indictment to imprisonment for a term not exceeding two years or a fine, or in either case, to both³.

1 The Statistical Office of the European Union was formerly referred to as the Statistical Office of the European Communities ('SOEC'), but is now known as 'Eurostat'. It is one of the directorates-general of the European Commission.

2 As to the meaning of 'Great Britain' see PARA 806 note 7.

3 Provision of Confidential Statistical Information to the Statistical Office of the European Communities (Restriction on Disclosure) Regulations 1991, SI 1991/2779, reg 3. 'Confidential statistical information' means statistical information which has been declared or classified as confidential in accordance with its law or national practice by the member state providing it, and provided to Eurostat by a member state in accordance with Euratom and EC Council Regulation 1588/90 on the transmission of data subject to statistical confidentiality to the Statistical Office of the European Communities (OJ L151, 15.6.1990, p 1) art 3: Provision of Confidential Statistical Information to the Statistical Office of the European Communities (Restriction on Disclosure) Regulations 1991, SI 1991/2779, reg 2. As to the statutory maximum see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 140.

Halsbury's Laws of England/TRADE AND INDUSTRY (VOLUME 97 (2010) 5TH EDITION)/5. STATISTICS/(2) OFFENCES AND DISCLOSURE/1019. Additional restrictions on disclosure of information.

1019. Additional restrictions on disclosure of information.

If any information to be obtained for the purposes of a census under the Statistics of Trade Act 1947¹ is also obtainable under any other enactment which restricts the disclosure of information obtained thereunder, and the Secretary of State² is of opinion that similar restrictions should be applied to any information to be obtained for the purposes of the census, he may provide by order³ for those restrictions to apply, without modifications or with such adaptations or modifications as he thinks fit, to the information to be so obtained⁴. Moreover, if it appears to him that the nature of the information to be obtained for the purposes of a census, or the nature of the undertakings⁵ to be covered by the census, would make it desirable to impose any other restrictions, he may by order prohibit the disclosure of information relating to particular undertakings obtained by means of the census, or any part of that information, except to specified persons or for specified purposes⁶.

1 As to such a census see PARAS 1010-1012.

2 As to the Secretary of State see PARA 803 note 2. As to the transfer of functions to the Chancellor of the Exchequer see PARA 1010 note 1.

3 No order may be made under the Statistics of Trade Act 1947 s 9 unless a draft is laid before Parliament and is approved by resolution of each House of Parliament: s 9(4). See **PARLIAMENT** vol 34 (Reissue) PARA 944. As to the making of orders see PARA 1023.

4 Statistics of Trade Act 1947 s 9(2). If a person is guilty of such an offence he is liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding the prescribed sum, or on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or, in either case, to both: s 9(6) (amended by virtue of the Criminal Law Act 1977 s 32(1); and of the Magistrates' Courts Act 1980 s 32(2)). As to the prescribed sum see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 141.

5 As to the meaning of 'undertaking' see PARA 1009 note 3.

6 Statistics of Trade Act 1947 s 9(3). See the Census of Distribution (1962) (Restriction on Disclosure) Order 1960, SI 1960/2364, and the Census of Distribution (1967) (Restriction on Disclosure) Order 1965, SI 1965/2061. As to the penalties for contravention of such an order see note 4.

Halsbury's Laws of England/TRADE AND INDUSTRY (VOLUME 97 (2010) 5TH EDITION)/5. STATISTICS/(2) OFFENCES AND DISCLOSURE/1020. Disclosure in public reports.

1020. Disclosure in public reports.

No report, summary or other communication to the public of information obtained under the Statistics of Trade Act 1947 may disclose the number of returns received with respect to the production of any article¹ if that number is less than five². In compiling any such report, summary or communication the competent authority³ must prevent any particulars published in it from being identified as particularly relating to any individual person or undertaking⁴, except with the previous consent in writing of that person or the person carrying on that undertaking; but the total quantity or value of any articles produced, sold or delivered may be stated, provided that prior to disclosure of such a total the competent authority has regard to any representations made to it by any person who alleges that the disclosure would enable particulars relating to him or to an undertaking carried on by him to be deduced from the total disclosed⁵.

1 'Article' includes substances, plant, vehicles, vessels, animals, water, gas and electricity, and 'plant' includes any machinery, equipment or appliance: Statistics of Trade Act 1947 s 17(4).

2 Statistics of Trade Act 1947 s 9(5)(a).

3 As to the meaning of 'competent authority' see PARA 1009 note 1.

4 As to the meaning of 'undertaking' see PARA 1009 note 3.

5 Statistics of Trade Act 1947 s 9(5)(b). As to the penalties for offences under s 9 see PARA 1019 note 4.

Halsbury's Laws of England/TRADE AND INDUSTRY (VOLUME 97 (2010) 5TH EDITION)/5. STATISTICS/(3) ADMINISTRATION AND NOTICES/1021. Advisory committees.

(3) ADMINISTRATION AND NOTICES

1021. Advisory committees.

The Secretary of State¹ must arrange for the appointment of one or more committees to advise him, or any other competent authority² to whom functions have been delegated³, with regard to the preparation of forms and instructions necessary for the taking of a census, the making of orders by him and to such other matters as may be referred to such a committee⁴. Committees may be appointed to advise specially about any special forms, instructions or orders, or generally about any class or description of forms, instructions or orders that may be assigned to them⁵. Every committee must include persons engaged in, or otherwise conversant with the conditions of, various trades and businesses⁶.

1 As to the Secretary of State see PARA 803 note 2. As to the transfer of functions to the Chancellor of the Exchequer see PARA 1010 note 1.

2 As to the meaning of 'competent authority' see PARA 1009 note 1.

3 Ie under the Statistics of Trade Act 1947 s 3: see PARA 1011.

4 Statistics of Trade Act 1947 s 8(1).

5 Statistics of Trade Act 1947 s 8(3).

6 Statistics of Trade Act 1947 s 8(1). With the consent of the Treasury, the Secretary of State may determine any travelling or other allowances to be paid to the members of the committee: s 8(2). With Treasury approval any expenses incurred by the Secretary of State or other competent authority are defrayed out of money provided by Parliament: s 15.

Halsbury's Laws of England/TRADE AND INDUSTRY (VOLUME 97 (2010) 5TH EDITION)/5.
STATISTICS/(3) ADMINISTRATION AND NOTICES/1022. Census report by the Secretary of State.

1022. Census report by the Secretary of State.

As soon as practicable after any census under the Statistics of Trade Act 1947¹ is complete, the Secretary of State² must present to Parliament a report of his proceedings in connection with the taking of the census and a summary of the statistics obtained³.

1 As to such a census see PARAS 1010-1012.

2 As to the Secretary of State see PARA 803 note 2. As to the transfer of functions to the Chancellor of the Exchequer see PARA 1010 note 1.

3 Statistics of Trade Act 1947 s 7. If the Secretary of State thinks fit, he may include in the summary of statistics any statistics obtained by him or a competent authority otherwise than by means of a census, or statistics obtained by a Northern Ireland department and communicated to him for the purposes of inclusion in the report; and the summary must contain separate statements relating to Scotland and Wales: see s 7. As to the meaning of 'competent authority' see PARA 1009 note 1.

Halsbury's Laws of England/TRADE AND INDUSTRY (VOLUME 97 (2010) 5TH EDITION)/5. STATISTICS/(3) ADMINISTRATION AND NOTICES/1023. Making of orders.

1023. Making of orders.

The Secretary of State¹ may by order² make provision for prescribing, either generally or with respect to any class or description of persons or undertakings³, anything which under the Statistics of Trade Act 1947 is to be prescribed, and generally for the purposes of carrying that Act into effect⁴. He may also make orders declaring commodities to be essential commodities⁵ for the purposes of the Essential Commodities Reserves Act 1938⁶.

1 As to the Secretary of State see PARA 803 note 2. As to the transfer of functions to the Chancellor of the Exchequer see PARA 1010 note 1.

2 All orders made under the Statistics of Trade Act 1947, other than orders made under s 9 must be laid before Parliament immediately after they are made, and if either House of Parliament, within 40 days, resolves that the order be annulled, the order ceases to have effect, but without prejudice to anything done under it or to the making of a new order: s 11(2); and see PARLIAMENT vol 34 (Reissue) PARA 945. In reckoning any such period of 40 days, no account is to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days: s 11(2). Orders under s 9 must not be made unless a draft has been laid before Parliament and approved by a resolution of each House: see s 9(4); PARA 1019 note 3; and PARLIAMENT vol 34 (Reissue) PARA 944.

3 As to the meaning of 'undertaking' see PARA 1009 note 3.

4 Statistics of Trade Act 1947 s 11(1). Any such order may be revoked or varied by a subsequent order made in like manner and subject to the like conditions as the original order: s 11(3).

5 As to the meaning of 'essential commodity' see PARA 1009 note 8.

6 See the Essential Commodities Reserves Act 1938 s 6, Schedule; and PARA 1009 note 8. All such orders must be laid before Parliament (s 5(2)) and may be varied or revoked by an order made in like manner (s 5(1)); see PARLIAMENT vol 34 (Reissue) PARA 943.

Halsbury's Laws of England/TRADE AND INDUSTRY (VOLUME 97 (2010) 5TH EDITION)/5.
STATISTICS/(3) ADMINISTRATION AND NOTICES/1024. Service of notices.

1024. Service of notices.

Any notice required or authorised by or under the Statistics of Trade Act 1947 to be served on any person may be served by delivering it to that person, by leaving it at his proper address¹ or by post². Any notice required or authorised to be served on a body corporate is duly served if served on its secretary or clerk³.

Where a notice is served by post otherwise than in a registered letter or by the recorded delivery service, service is not deemed to have been effected if it is proved that the notice was not received by the person to whom it was addressed⁴.

1 The proper address of any person on whom a notice under the Statistics of Trade Act 1947 is to be served is the last known address of the person to be served: s 12(3); Interpretation Act 1978 ss 7, 17(2)(a), Sch 2 para 3; and cf COMPANIES vol 14 (2009) PARA 671. Where the name of a person carrying on an undertaking at any premises is not known, then, if any such notice is sent by post in a registered letter or by the recorded delivery service so addressed as to show the name in which and the premises at which the undertaking is carried on, the letter is deemed for the purposes of s 7 to be properly addressed: s 17(2)(a); Statistics of Trade Act 1947 s 12(4); Recorded Delivery Service Act 1962 s 1(1), (2), Schedule para 1. As to the meaning of 'undertaking' see PARA 1009 note 3.

2 Statistics of Trade Act 1947 s 12(1).

3 Statistics of Trade Act 1947 s 12(2). In the case of a secretary or clerk of an incorporated company or body, the proper address for service of such a notice is that of the registered or principal office of the company or body: see s 12(3); the Interpretation Act 1978 ss 7, 17(2)(a), Sch 2 para 3; and cf COMPANIES vol 14 (2009) PARA 671.

4 Statistics of Trade Act 1947 s 12(1); Recorded Delivery Service Act 1962 s 1(1), (2), Schedule para 1. This has the effect of disapplying the Interpretation Act 1978 s 7 (which provides that a properly addressed, prepaid and posted letter is deemed to constitute proper service of a document contained in it) other than to a registered letter or a letter sent by recorded delivery.